



Is Hattiesburg's government being as transparent as they should be? Was the Open Meetings Act violated?



Councilwomen Deborah Delgado and Mary Dryden along with Councilmen Jeffrey George, and Carter Carroll attend a meeting with a group from Camp Shelby in Council Chambers. The meeting was not published, no minutes were taken, and the press was not notified.

Mississippi has strict Open Meetings Laws which dictate that our public officials conduct business in a transparent matter.

And citizens generally want a government that operates at a high level of transparency; however on May 10th, 2018, when four council members gathered in chambers under the direction of the Barker Administration, they met with a group from Camp Shelby and took questions. They did so inside City Council Chambers with four Council persons present. Three or more members present is considered a quorum.

The Mississippi Open Meetings Act opens with Section 25-41-1 Legislative Declarations, and it says,

It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it 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.

It is important that elected officials hold themselves to a high standard and comply with both the letter of the law as well as the spirit of the law. When council members meet as a quorum, they indeed have the power to take official action. A quorum exists in Hattiesburg City Government when three or more council members meet in pre-arranged circumstances. While the intentions may not involve votes, according to the Mississippi Open Meetings Act, there are few exceptions to its protection for the citizens. Under Mississippi Code 21-41-3 those exceptions to the law are:

*The judiciary, including all jury deliberations;
Law enforcement officials;
The military;*

*The State Probation and Parole Board;
The Workers' Compensation Commission;
Legislative subcommittees and legislative conference
committees;
The arbitration council established in Section 69-3-19;
License revocation, suspension and disciplinary proceedings
held by the Mississippi State Board of Dental Examiners; and
Hearings and meetings of the Board of Tax Appeals and of the
hearing officers and the board of review of the Department of
Revenue as provided in Section 27-77-15.*

The Open Meeting Act further states,

*(1) All official meetings of any public body, **unless otherwise provided in this chapter** or in the Constitutions of the United States of America or the State of Mississippi, are declared to be public meetings and shall be open to the public at all times unless declared an executive session as provided in Section 25-41-7.*

Chance meetings or social gatherings are not subject to Mississippi's Open meetings laws according to Mississippi Code 25-41-17.

25-41-17 The provisions of this chapter shall not apply to chance meetings or social gatherings of members of a public body.

However, this meeting appears to be anything but a chance meeting, since council members were requested to be present by Mayor Toby Barker a day in advance to speak to a group of students from Camp Shelby. According to a statement from the Barker Administration,

*Each council member in attendance introduced him/herself and answered these three questions:
Explain why you wanted to run to be a City Council member?
What do you like about Hattiesburg?
What's unique about your ward?*

Samantha McCain, Mayor Barker's Press Secretary issued a statement.

*Based on an opinion by the Mississippi Ethics Commission in Dick Hall v. Mississippi Transportation Commission "a function attended by a public board, whether informal or impromptu, is a meeting with the meaning of the Act **only** when there is to occur 'deliberative stages of the decision-making process that lead to formation and determination of public policy.'"*

Based on this opinion, hosting this group did not constitute a "meeting" as defined by Section 25-41-3 (b) of the Mississippi Code, and, therefore, no notice of the informal gathering was required under Section 25-41-13 of the Mississippi Code. However, the perception that this may be a "public meeting" as defined by the statute is taken very seriously, and Mayor Toby Barker states the following:

"Today, one of Hattiesburg's key economic partners visited our offices to learn more from our city council members, my office and the City of Hattiesburg. There was no malicious intent for not providing notice for the informal forum, but we recognize how it might be perceived. And while the Mississippi Ethics Commission has issued opinions concluding that gatherings such as this do not require public notice, we will always seek to operate with transparency, including giving proper notice on events that do require proper advertising procedures. If anything, our

administration uses opportunities like these to grow and become a more credible, citizen-centered organization."

It's unclear, without an Ethics Commission Opinion, whether or not this type of meeting, is a violation of the Mississippi Open Meetings Act itself, its spirit, both or neither. The meeting does raise questions about just how accountable our city leaders are willing to hold themselves to process and to the light of transparency. When questioned about the meeting, Councilman Carter Carroll said,

"I was a participant in a leadership, classroom setting."

Councilman Carroll also stated that he has directed the City Attorney, Randy Pope, to request an opinion with the Mississippi Ethics Commission regarding the matter. That request will be published when it is available.