



# MISSISSIPPI ETHICS COMMISSION

P. O. BOX 22746  
JACKSON, MISSISSIPPI 39225-2746  
TELEPHONE (601) 359-1285

Case No. M-

M-18-014

## OPEN MEETINGS COMPLAINT

### PLEASE READ THE FOLLOWING STATEMENTS BEFORE COMPLETING THIS FORM:

Pursuant to Section 25-41-15, Miss. Code of 1972, the Ethics Commission must forward a copy of this complaint to the head of the public body involved. The public body shall have fourteen (14) days from receipt of the complaint to file a response with the commission. After receiving the response to the complaint or, if no response is received after fourteen (14) days, the commission, in its discretion, may dismiss the complaint or proceed by setting a hearing in accordance with rules and regulations promulgated by the Ethics Commission. After completing, signing and dating the form, please mail it postage prepaid to the address listed above.

#### PERSON MAKING COMPLAINT (Complainant):

Name: Rawson, Joseph Daryl  
(Last) (First) (Middle)  
Mailing Address: 701 #1 Dearborne Road Hattiesburg MS 39401  
(Street) (City) (State) (Zip Code)  
Telephone No.: (601) 297-2819 Email Address: joseph.rawson.works@gmail.com  
(Area Code, Prefix, Number)

#### PUBLIC BODY AGAINST WHICH COMPLAINT IS MADE (Respondent):

Name of Public Body: The Council of the City of Hattiesburg  
Name of Presiding Officer: Carroll Carter  
(Last) (First) (Middle)  
Title or Position: President of the Council of the City of Hattiesburg  
Mailing Address: P.O. Box 1898 Hattiesburg MS 39403-1898  
(Street) (City) (State) (Zip Code)  
Telephone No.: (601) 545-4551 Email Address: ccarroll@hattiesburgms.com  
(Area Code, Prefix, Number)

#### ALLEGATIONS AND STATEMENT OF FACTS:

In your own words, please provide a description of the violation(s) of the Open Meetings Act which you believe have occurred. The description should include the alleged violation and any details relating to it, such as names, titles, dates and places where possible and where applicable.

See attached.

Before the Mississippi Ethics Commission

Joseph Rawson

Complainant

vs.

The Council of the City of Hattiesburg

Respondent



Case No. M-18-\_\_\_\_\_

**Open Meetings Complaint**

I, Joseph Rawson, come now and, file this, my Open Meetings Complaint, in accordance with § 25-41-15 Mississippi Code of 1972, as follows, to wit:

**Introduction**

1. I, Joseph Rawson, am a resident of the City of Hattiesburg, residing at 701 Dearborne Road. I may be reached by telephone at (601)297-2819, and also by email addressed to joseph.rawson.works@gmail.com.
2. The respondent in this complaint is the Council of the City of Hattiesburg ("Council" hereinafter). The president of the Council is Mr. Carter Carroll Councilman of Ward 3 in the city. He may be reached through the Clerk of Council at 200 Forrest Street in the City of Hattiesburg. The Clerk of Council and/or the Council receives emails addressed to council@hattiesburgms.com, and the Clerk of Council can be reached by telephone at (601)545-4553.
3. The City of Hattiesburg operates under the Mayor Council form of government, provided by Title 21, Chapter 8 of the Mississippi Code of 1972. The postal zip code for both City Hall and my residence is 39401. All meetings of the Council are held in the Council Chambers of City Hall, unless the Council deems it better to hold a meeting at another place. Generally, excepting elections and special events, the doors to City Hall are locked at 5 p.m. each day. Council members are

prohibited by statute from having individual offices in City Hall.<sup>1</sup>

4. This complaint concerns the moral conduct of the Council with regard to the moral standards set by the Legislature in the Open Meetings Act codified in Title 25, Chapter 41 of the Mississippi Code of 1972. Also, with regard to the procedure and penalties provided in § 25-41-15, I am proceeding under the presumption of a preponderance of evidence being the burden I bear in proving the complaint.

#### **Initial Notice**

5. On the early evening of the 6<sup>th</sup> of June, 2018, I received an email from the Clerk of Council notifying me that a special called meeting of the Council was to take place on the 7<sup>th</sup> of June at 6 p.m. I, along with other officers, citizens, and members in the news media, subscribe to receive email notification of Council meetings posted by the Clerk of Council routinely. The agenda for the meeting contained a single item, titled “Consider the need to go into executive session to interview candidates for the Clerk of Council position, in accordance with Mississippi Code Section 25-41-7 (a).” No other item of business was present on the agenda.<sup>2</sup> (“Agenda” hereinafter)

6. I sent an email<sup>3</sup> to my representative, Mrs. Mary Dryden, Councilwoman Ward 4 expressing my concern that as a matter of law, the Council doesn’t have to authority to enter into executive session for the stated reason. I received no response to this email, but I later learned that it was forwarded to the municipal attorney, Mr. Randy Pope.

#### **Attending the Meeting**

7. I made it to City Hall about five minutes before 6 p.m. on the day of the meeting, June 7, 2018. The doors to City Hall were locked. I jiggled the doors to gain attention and was greeted by Mr. Pope, the city attorney. He let me enter City Hall, and we both took seats in Council Chambers. He

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1 The purpose of the paragraph is to acquaint the Commission with our city, knowing that the large majority of municipalities in Mississippi are governed under the code charter statutes.

2 The agenda for the meeting is hereto attached as Exhibit A.

3 The email to Mrs. Dryden is hereto attached as Exhibit B.

informed me that Mrs. Dryden forwarded my email to him. He also told me he contacted Mr. Tom Hood and was directed to a prior matter that came before this Commission, said matter being styled “David Howell vs. Board of Mayor and Aldermen, City of Water Valley” (M-09-006). Mr. Pope presented a copy of the Order of Dismissal for me to review.

8. After receiving a copy of the dismissal order, the Council convened in chambers, and the Council President proceeded to call the meeting to order. All members of the Council were present in chambers for the meeting. Usually, the Clerk of Council, or her deputy, is there as secretary to record the votes, and take minutes. Minutes are generally transcribed from a portable audio recorder after the meeting. There was no audio recording of this meeting, and the President of Council took the minutes and recorded the votes. A motion was made to consider entering into executive session to “discuss the job performance, character, and professional competence of a person in a specific position.”<sup>4</sup> This motion passed unanimously. Immediately after the motion passed, and without closing the meeting, or even having open discussion to consider entering into an executive session, a motion was made to enter into executive session for the exact same reason as the prior motion to consider. This motion also passed unanimously, and immediately after passage, the President of the Council closed the meeting and the Council entered into an executive session. I then left City Hall with Mr. Pope and began my review of the prior decision of the Commission that I received from the city attorney.

### **Review of Howell v Water Valley**

9. When I started reading the decision, I noticed that it was quite dated. I also remembered a more recent event here in the city, when Tom Garmon approached the Hattiesburg Public School District with concerns about some school employees. I remember that Mrs Ellen Ciurczak, a reporter for our local newspaper, the Hattiesburg American, filed a complaint with this Commission, and the decision returned seemed to validate my concerns about the moral actions of the Council during the

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<sup>4</sup> I would make sure the quote is precise, if an audio recording was available. The quote is as accurate as I can remember, and also I was listening for something specific, yet the motion was certainly too general.

meeting on 7<sup>th</sup> of June. Nevertheless, I read the Howell decision with the impression that it must bear relevance to the council meeting I attended.

10. In the listed facts, the Commission confirms that Mr. John Crow was not employed as a city attorney for the City of Water Valley. The Commission goes even further and reveals that “[o]n July 7, 2009, the board entered executive session to discuss the performance and competence of Mr. Crow.”

11. In the analysis of the Commission, the Commission properly states that “the city attorney holds a ‘specific position’ authorized by statute,” yet neglects to reach the obvious conclusion that Mr. Crow held no such position at the time of the Water Valley Board meeting. Instead of reaching this obvious conclusion, the Commission chose to use *Hinds County Board of Supervisors v. Common Cause of Mississippi*, 551 So.2d 107 (Miss.1989) (“Hinds” hereinafter) to reflect upon the nature of employment of the city attorney. In doing so, the Commission accurately interpreted the fact that an independent contractor will almost never be considered “personnel” within the meaning of the exemption provided in the Open Meetings Act. The commission then proceeds to properly give good reason to identify a municipal attorney as an employee of a municipality, and most certainly a member of a municipality’s “personnel.”

12. However, the Commission completely neglected the very obvious fact that Mr. Crow was not an employee of the City of Water Valley, and was not a person holding a specific position in the municipality, which is required to discuss his performance and competence in an executive session. In my review, I found the dismissal of Mr. Howell’s complaint to be flawed, and the decision inapplicable to this complaint.

### **Presentation of Issues**

13. I have five distinct issues to present before the Commission, to wit:

1. Did the Council violate the Open Meetings Act when they entered into executive session to

interview candidates for the Clerk of Council position?

2. Did the Council violate the Open Meetings Act when they neglected to close the meeting to determine whether they should enter executive session?
3. Did the Council violate the Open Meetings Act when they voted to enter into an executive session in an Open Meeting?
4. Did the Council violate the Open Meetings Act when they neglected to give an adequately detailed reason to enter executive session?
5. Did the Council violate the Open Meetings Act when they neglected to ensure that the doors to City Hall were unlocked?

14. I will elaborate and develop these issues, with the teachings of the Supreme Court of Mississippi as guidance. Upon my review of the case law concerning the Open Meetings Act, the Court takes special care to express their dedication to strict adherence to this act, even to the point of waxing poetic and filling their opinions with much philosophy and spirit. I shall endeavor to follow suit in developing my issues before the Commission.

15. "Let us not be afraid to help each other — let us never forget that government is ourselves and not an alien power over us. The ultimate rulers of our democracy are not a President and Senators and Congressmen and Government officials but the voters of this country" Franklin D. Roosevelt, in his address at Marietta, Ohio (8 July 1938). Be not afraid, for the itching ears of the Council seems to neglect the sound doctrine of both who they represent, as well as the solemn word of the people of Mississippi. The Commission is being called in this complaint to help the people of the City of Hattiesburg and provide the proper guidance in how to abide by the moral standards expressed in the Open Meetings Act.

### **Interviewing Candidates**

16. The Council, through the Clerk of Council, or through other means, invited approximately

three certified clerks to attend the job interview<sup>5</sup>. It should be presumed that these candidates for Clerk of Council are applicants, and the Council didn't actively search the municipalities to enlist the services of a clerk currently serving another municipality. Nevertheless, the reason I was given by the municipal attorney, Mr. Pope, that caused the Council to feel compelled to hold the meeting in private was that the clerks had not informed their municipalities that they were seeking another job. With this in mind, I can truly understand the desire to conduct the interviews in privacy, as a matter of convenience.

17. Yet, "[h]owever inconvenient openness may be to some, it is the legislatively decreed public policy of this state." *Mayor & Alderman v. Vicksburg Printing & Pub.* 434 So.2d 1333 (1983) ("Vicksburg", hereinafter). The legislative intent of the Open Meetings Act "addresses when a gathering must be open to the public, and determining when a gathering must be open to the public is a fact-intensive analysis focusing on the subject matter of the gathering and the circumstances surrounding the gathering." *Mayor and City Council and City of Columbus v. The Commercial Dispatch*, ("Columbus" hereinafter) Mississippi Supreme Court ("Court" hereinafter) case numbered 2016-CC-00897-SCT.<sup>6</sup> This should clearly inform the Commission, when making a determination, that both the subject matter of the gathering, as well as the circumstances surrounding the gathering should be weighed with regard to the legislative intent of the whole Open Meetings Act.

#### **Interviewing Candidates: Subject Matter of the Meeting**

18. The subject matter for the meeting is clearly expressed on the Agenda, stating the Council's desire to "[c]onsider the need to go into executive session to interview candidates for the Clerk of Council position, in accordance with Mississippi Code Section 25-41-7 (a)." Hence, the people are

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<sup>5</sup> I have been informed that 3 certified clerks applied to the position. I observed one potential candidate at the meeting. There was a substantially similar meeting on the 12<sup>th</sup> of June where more observable candidates attended the meeting. The meeting on the 12<sup>th</sup> of June is not for the Commission to review.

<sup>6</sup> I have no Souther Reporter citation for this case. It is my hope that full case numbers for recent controversies will be sufficient to inform the Commission where to read the opinion of the Court.

being put on notice that the Council intends to consider interviewing candidates in an executive session, yet the specific exemptions listed in section 25-41-7 Miss. Code 1972 (“Exemption Statute” hereinafter) do not provide a vehicle to provide for executive sessions on this subject matter. The specific subsection, (4)(a), of the Exemption Statute should be unambiguously determined from the item on the Agenda. There exists no subsection “(a)” in any other subsection of the Exemption Statute. It should be noted that the later amendment by the Legislature to this exemption cannot apply to the governing body of a municipality<sup>7</sup>, so the public is left with only the “personnel matters” portion of the provision.

19. Subsection (4)(a) of the Exemption Statute specifically provides that executive sessions may be held for the “[t]ransaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person holding a specific position.” With regard to the only item on the Agenda, it should be noted that “candidates for the Clerk of Council position” cannot be holding the Clerk of Council position. No other specific position is given on the Agenda, and the public has no reason to feel confident that an actual personnel matter will be discussed at the meeting. The public must feel confident in their government, for when it “does not have the confidence of the people[, it] can never govern effectively,” as stated by the Court in Vicksburg.

### **Interviewing Candidates: Circumstances Surrounding the Meeting**

20. The prior Clerk of Council submitted a letter of resignation to the Council, having reached an age of acceptable retirement. This letter, to the best of my knowledge<sup>8</sup>, was tendered to the Council during the recessed meeting<sup>9</sup> The letter was accepted and acknowledged by the Council, where the clerk announced retirement effective at the end of June, 2018, while leaving the City Hall

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<sup>7</sup> The later amendment concerns only physicians and hospital employees. The remainder of this complaint, for reasons of brevity and easier reading, will ignore the amendment to this subsection since it is entirely inapplicable.

<sup>8</sup> Minutes to the recessed meeting are not approved and available to the public at this time.

<sup>9</sup> The City of Hattiesburg splits the regular monthly meetings into a regular meeting in the beginning of the month, as provided by statute, then recesses the meeting for two weeks. The regular monthly meeting is adjourned at the recessed meeting two weeks after the initial regular meeting.



on the 1<sup>st</sup> of June and presumably spending the remainder of her term in accrued vacation time. This demonstrates that the office of Clerk of Council was not vacant at the time of the meeting on the 7<sup>th</sup> of June. With the acceptance and acknowledgement of the clerk's letter upon those terms, the position of Clerk of Council was technically and legally filled, yet effectively and practically vacant, since the Council accepted the fact that no duty would be performed by the clerk for the remainder of her term after leaving City Hall.

21. While the only item on the Agenda clearly stated the intent to consider an executive session to "interview candidates for the Clerk of Council position," the motion passed by the Council was to enter executive session to "discuss the job performance, character, and professional competence of a person in a specific position." Generally, when the Council makes a motion to engage in the business listed on the Agenda, the movant will express the motion using the language provided by the agenda item. At this point, I want to remind the Commission that I sent an email to my representative on the Council almost twelve hours earlier, where I informed her that the stated reason to consider entering executive session was forbidden as a matter of law.

22. Prior to the motion to executive session, there was no discussion of any problem with any personnel. There were no people present that would lead anybody in attendance that the reason to enter into executive session was for the discussion of any position other than the Clerk of Council. When the meeting closed for the executive session, I left Council Chambers and City Hall as well, along with the municipal attorney, who let me know he was just there to set them up with the meeting. There was no way back into City Hall, since the doors were locked, and I had no reason to believe that the executive session was other than the session planned and published on the Agenda.

### **Interviewing Candidates: Analysis**

23. With regard to both the subject matter of the meeting, as well as the circumstances surrounding the meeting, attention must be paid to the public confidence, since "in a democratic society the public's business must be open to maintain the public's confidence in its officials, to

make intelligent judgments, and to select good representatives.” Board of Trustees of State Institutions of Higher Learning, et al., v. Mississippi Publishers Corporation 478 So. 2d 269 (1985). “A [public body] which only announces ‘litigation’ or ‘personnel matters’ for going into executive session has said nothing.” **Hinds**. When the Council moved to enter into executive session to “discuss the job performance, character, and professional competence of a person in a specific position,” they essentially had nothing to say, and a reasonable observer could only conclude that the Council was proceeding with the business listed on the Agenda, with no other “personnel matter” to discuss.

24. With the only reasonable observation that the Council decided to enter executive session to interview candidates for the position of Clerk of Council, attention should be paid to the ability of the Council to actually close the meeting for such purpose. Come now, and let us reason together concerning the ability of the Council to discuss the “the job performance, character, and professional competence of a person in a specific position” when the only reasonable position being discussed is that of the Clerk of Council. The resignation of the Clerk of Council has already been accepted by the Council, and while the position is technically not vacant, the clerk is on vacation and will not perform duty after June 1, and also will never come back. What purpose does it serve the public to discuss this personnel matter when it can never affect the person already resigned? I can find no reasonable discussion that would serve the public good concerning the topics expressed to enter the executive session. There may exist a possibility<sup>10</sup> that investigative proceedings against the person in that position for violations of law could occur, but that was never stated as the reason to enter executive session. Discussing “the job performance, character, and professional competence of a person in a specific position” before applicants for that position is good for a job interview, but does it serve the public when the meeting is closed?

25. The findings of fact gathered from interviewing candidates for the position of Clerk of

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<sup>10</sup> There is truly no realistic possibility with the retiring Clerk of Council, and the people of the city were blessed to have such a master clerk.

Council are part of the deliberations that encourage the decisions that go into the making of public policy. Closing the interviewing of candidates on the terms of “personnel matters” that don’t reasonably exist is using the Exemption Statute to circumvent the philosophy and spirit of the Open Meetings Act. “The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them.” Patrick Henry in a speech on the Federal Constitution, Virginia Ratifying Convention (Monday, 9 June 1788)

26. “Nothing in [the Exemption Statute] shall be construed to require that any meeting be closed to the public, nor shall any executive session be used to circumvent or to defeat the purposes of this [act].” Exemption Statute (3). The purposes of the Open Meetings Act is clearly provided for in the legislative directive, which in verbatim states:

27. *“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 as public business and shall be conducted at open meetings except as otherwise provided herein.”* § 25-41-1 Mississippi Code of 1972.

28. It should be clear that “[t]he very purpose of the [Open Meetings] Act is for all meetings to be open, public. It therefore follows that even though an executive session might come under ‘personnel matters,’ or another of the subjects listed under [the Exemption Statute], this in and of itself is insufficient in the absence of at least a reasonably arguable basis of an actual, present need for a closed meeting on the subject.” **Hinds**. For our Court “[t]o hold otherwise would indeed be making the exception as broad as the Act itself, and emasculate the admonishment of [section 3 of the Exemption Statute]” **Id**.

29. In summary, the subject matter of the meeting, clearly expressed on the Agenda, was to

consider entering into executive session in a manner not provided by law. The circumstances surrounding the meeting also failed to provide the public with a substantially valid reason to enter into executive session. All that I can reasonably conclude is the the Council chose to use the Exemption Statute improperly as a vehicle to circumvent the purposes of the Open Meetings Act.

### **Mandatory Procedure for Executive Sessions**

30. The three issues of procedure I bring before the Commission, numbered 2, 3, and 4, are probably best dealt with in a single discussion of the mandatory procedure required by the Exemption Statute to enter into an executive session.<sup>11</sup> The Council will be one year into their term in July 2018. The five member council consists of three seasoned council members, and two new council members. It has been a long standing practice in the city, in previous meetings of the Council, for the Council to conveniently bypass the mandatory requirements that allow them to enter into executive sessions. I have been attending the meetings of Council regularly since the first of August, 2011, and first addressed the Council two weeks later on the 15<sup>th</sup> of August, 2011. I have yet to observe the Council follow the correct procedure to enter into an executive session.<sup>12</sup>

31. The routine procedure the Council follows to enter into an executive session can be briefly described as follows: A motion to consider entering into executive session is made, and passes. There is no discussion. The meeting is not closed. Immediately after passage of the motion, being that there is no discussion, a motion is made to enter into executive session. Generally, there is also no discussion at this point either. Then the meeting is closed, and the Council enters into executive session. Generally, the reason to consider entering into executive session is identical to the reason that is given to actually enter into the session, said reason amounting to “generalized fluff,” such as “personnel matters,” “pending litigation,” or “prospective litigation.”

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11 Also, when examining the procedure of the June 7<sup>th</sup> meeting, for the purpose of future meetings, I will like the Commission to presume that this procedure was performed in an Open Meeting, even if the Commission determines that the meeting was closed ab initio by neglecting ensure the doors to City Hall were unlocked.

12 I admit that I was not aware of the correct procedure when I first started attending meetings of the Council. Also, I am not submitting any previous meetings before the Commission, yet only directing the Commission’s attention to the June 7<sup>th</sup> meeting in question.

32. The Hinds Court is the primary common law to review concerning the procedures required for executive sessions. The Hinds Court takes special care to elaborate the specific steps required for a public body to enter into an executive session, while also providing sound reasons for each and every step in the procedure. It behooves all of us to pay special attention to the Hinds Court with regard to this procedure, as the Court took such care to eloquently guide both the public and the public bodies in how the Court will treat these matters.

33. To start with, *“the meeting must begin as an Open Meeting.”*<sup>13</sup> Then, *“[a Council] member must make motion in Open Meeting for the meeting to be closed to determine whether or not the Board should declare an executive session.”* (emphasis added). It should be clear that a meeting absolutely must be closed for this determination. A meeting can never enter into an executive session, until the meeting is first closed to determine whether an executive session is even necessary.

34. During the closed portion of the meeting to determine the necessity<sup>14</sup> for an executive session, the vote to enter into executive session must be made during the closed meeting. The Hinds Court clearly directs that *“Th[e] entire procedure and the vote on each stage must thereafter be recorded on the minutes.”* The words of the Court clearly are in adherence to subsection 5 of the Exemption Statute, and provide the people with how the Court will interpret a vote to enter into executive session in an open meeting. I am very certain that the Court, respecting the strict adherence to the legislative directive and provisions, will determine that a vote to enter an executive session in an Open Meeting clearly circumvents the requirements of the Open Meetings Act. While nothing in the Exemption Statute can be construed as requiring a meeting to be closed, the only method of enter into an executive session absolutely requires an initial closing of the meeting with a vote to enter the session taken in that closed portion of the meeting.

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13 Since **Hinds** extensively describes the appropriate procedure, and for the ease of reading, all italicized quotes will be from the Hinds Court, unless otherwise specifically cited. The quotes from **Hinds** are italicized for distinction.

14 The language of the Exemption Statute clearly expresses that executive sessions are not held by desire, yet out of necessity.

35. With regard to the reason to enter into executive session, the Council provides a sufficiently informative reason to consider an executive session, although the Exemption Statute doesn't provide for executive sessions to be entered into for such a reason. I admit that the Agenda sufficiently informs the public that the Council will "[c]onsider the need to go into executive session to interview candidates for the Clerk of Council position." Agenda. This is clearly not "*generalized fluff*," yet a very informative statement of intent.

36. However, the words used to actually consider the need for an executive session are essentially a restatement of the statutory provision, yet there really need be no reason to provide a reason to close the meeting. It is upon the motion and passage of the vote to enter into an executive session, without regard to the public observing the motion and vote, where the public is informed of the exact reason that the Council is entering into the session. During the meeting on the 7<sup>th</sup> of June, the reason to enter the executive session to "discuss the job performance, character, and professional competence of a person in a specific position" was clearly expressed. This is a truly general reason that neglects to inform the public, with sufficiency, the reason to enter into the executive session. "Do nothing secretly; for Time sees and hears all things, and discloses all." Sophocles, Hipponous, fragment 280. The public is not given sufficient reason for the necessity for secrecy. *"The [Council] should not be required to give the reason for going into executive session in such detail as to defeat the very purpose of going into executive session. At the same time, it must, as above noted, disclose enough so that the audience can know in fact that there is some specific area of matter that the [Council] has wisely concluded should, for the time being, be discussed in private."* *"When a [council president] tells a citizen he may not hear the board discuss certain business, he is taking liberties with the rights of that citizen, and the reason given for this interference must be genuine and meaningful, and one the citizen can understand."*

### **Locked Doors at City Hall**

37. The issue of the locked doors a City Hall is sufficiently developed.

## **My Careless Neglect**

38. There was a point in a past meeting when a prior council decided to enter into an executive session that didn't seem appropriate, and this prompted my curiosity and impressed upon me to learn more about how executive sessions are to be conducted. This was my first exposure to the **Hinds** controversy, yet I neglected to take full heed of the Court in that opinion. The Hinds Court very clearly expresses that the purpose of the Exemption Statute "*is to discourage private meetings of public bodies, and closed session discussions and consideration of public business.*" I neglected to "*make it somewhat onerous and time consuming for the [Council]*" in order to make certain that the Council "*will [...] be less inclined to go into executive session, [rather] than a [council] at liberty to do so simply by publicly stating it is going into executive session.*" If I had taken adequate heed to the wisdom of the Hinds Court, I am certain that this complaint would never exist. My neglect to enforce moral conduct has provided the environment where our Council perceives they have powers that are expressly prohibited by law. "To believe that new monsters will arise as vicious as the old, to believe that the great Pandora's Box of human frailty, once opened, will never show a diminution of its ugly swarm, is to help, by just that much, to make it so forever." Thomas Wolfe in Book VII, Ch. 47: Ecclesiasticus

39. To understand the preceding paragraph, the Commission should recognize that a three judge panel from thirty years ago has reached through time and found me guilty of neglect, since this is how I read their wisdom, as well as their warning. When a judge finds a person guilty, and the person is truly and knowingly guilty, that person must bear the judgment of the court as a penalty. Due to my guilt, and my neglect of not taking proper heed of their warning, I must bear the consequences of their admonishment, namely a council at liberty to enter an executive session by merely publicly stating their intention to do so.

## **Conclusion**

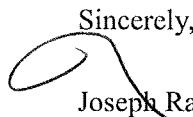
40. "The [Open Meetings] Act [...] provides the specific reason why public business should be

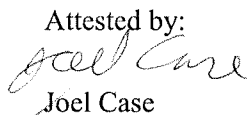
performed at public meeting; it states that it is 'essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society.' Miss. Code Ann. § 25-41-1." **Columbus** I have neglected to properly participate in the maintenance of our democratic society, to protect the republic we treasure, where it is truly essential that public affairs are performed in public view. My neglect in not coming before the Commission for requesting help in enforcing just the simple procedural requirements provided by the Exemption Statute has left the public with a council who can enter into a closed meeting by simply stating their desire, under the guise of necessity, to do so.

41. I seek and pray that the Commission reflects upon the moral conduct of the Council before and during the meeting on the 7<sup>th</sup> of June 2018, and answers each issue with affirmation, while preventing one issue to override another by mootness. I request that the Commission, informally and without being incorporated into the Order returned, direct the Council to review the **Columbus** Opinion, to help guide the Council when confronted with a subject matter similar to the subject matter of the June 7<sup>th</sup> meeting.<sup>15</sup> Please help me correct my neglect by helping me provide restitution, to restore the Council to their commitment to excellent moral conduct.

42. "I've been trying to get down to the Heart of the Matter, But my will gets weak, And my thoughts seem to scatter, But I think it's about forgiveness. Forgiveness. Even if, even if you don't love me anymore." Don Henley in The Heart of the Matter, from The End of Innocence (1989).<sup>16</sup>

I solemnly swear, under oath, that the foregoing testimony of all matters of fact are true and correct to the best of my knowledge. Respectfully submitted, this the 14<sup>th</sup> day of June, 2018.

Sincerely,  
  
Joseph Rawson

Attested by:  
  
Joel Case

<sup>15</sup> I honestly desire that the Council to work properly without calling upon the Commission ever again.

<sup>16</sup> For Hattiesburg is the Birthplace of Rock and Roll, and the album is *remarkably* contemporary with the Hinds Opinion.



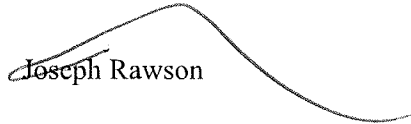
Joseph Rawson  
701 Dearborne Road #1  
Hattiesburg, MS 39401

**Certificate of Service**

I, Joseph Rawson, as a matter of courtesy and to provide more time to the respondent, hereby certify that a copy of the above and foregoing document has been served on the following, by delivering same to their office addresses through hand delivery on this the 14<sup>th</sup> day of June, 2018:

Debra Bernardo  
Clerk of the Council of the City of Hattiesburg  
200 Forrest Street  
Hattiesburg, MS 39401

So certified, this the 12<sup>th</sup> day of April, 2016.

  
Joseph Rawson

# City of Hattiesburg, MS

200 Forrest St.  
P.O. Box 1898  
Hattiesburg, MS 39401

Exhibit

A



## Meeting Agenda

Thursday, June 7, 2018

6:00 PM

Council Chambers

### City Council - Special Called Meeting

*City Council  
Special Called Meeting*



Joseph Rawson &lt;joseph.rawson.works@gmail.com&gt;

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**Special Called Meeting of the City Council at 6:00 p.m.  
tomorrow**

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Joseph Rawson &lt;joseph.rawson.works@gmail.com&gt;

Thu, Jun 7, 2018 at 6:27 AM

To: mdryden@hattiesburgms.com

Mrs. Dryden,

*Exhibit B*

I received an email yesterday concerning the meeting today. The agenda contained a single item where the Council will "[c]onsider the need to go into executive session to interview candidates for the Clerk of Council position, in accordance with Mississippi Code Section 25-41-7 (a)." It is not possible for a municipal legislative body to go into executive session to interview candidates for any position in accordance with any provision of 25-41-7. To enter into executive session for personnel matters requires that those matter be related to a person in a specific position. A candidate for a position cannot be a person in a specific position. To enter into executive session to discuss "matters relating to the terms of any potential or current employment" requires that those positions be physicians or hospital employees.

There are many executive sessions entered into by the Council, and without regard to the necessity, or even legality of entering into those sessions, the notice of intent to consider entering into almost all sessions have been at least moderately satisfactory. For the most part, with the large bulk of executive sessions I've watched you enter, the necessity and ability to enter the session were matters of fact, where the reason is provided by law. In those sessions, the facts of the matter may not meet the requirements to enter into executive session, but the general reason given is provided by law. In this intent to consider I received yesterday, the ability to actually enter into executive session for the stated reason is a matter of law, and no matter of fact can exist to enter the session since it's not provided by law.

Please understand this when you meet with the rest of the Council today. Please find another way to review the qualifications for candidates of the Clerk of Council. I'm sure that there are better ways to do what you need to do without posting an intent to consider entering into an unlawful executive session. Thank you for taking the time to read this.

Sincerely

Joseph Rawson

[Quoted text hidden]