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**VIA EMAIL: info@ehtics.state.ms.us
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February 23, 2023

Mississippi Ethics Commission
600 North Street, Suite 100-C
Jackson, Mississippi 39202

RE: Open Meetings Complaint No. M-23-001 and
Open Meetings Complaint No. M-23-002

Dear Sir:

Please find the response of the City of Grenada, Mississippi to the two above named complaints filed by Mr. Adam Prestridge of the Grenada Star.

1. ALLEGATIONS- NO. M-23-001:

(A). "The incident occurred on Thursday, Jan. 19, when a Special Called Council Meeting was held at 6 p.m. via teleconference. The City issued no notification to the local newspaper, The Grenada Star, or its citizens of the meeting. The City's website did not include a notice of the meeting, a notice was not posted on the front door of City Hall and no emails were received by the Star".

(B). "Prestridge arrived five minutes prior to the meeting at City Hall, which was dark and locked. Councilman Fredreick "Pete" Wilson(Ward 2) was parked in front of City Hall and offered access to the meeting using the teleconference phone number and code. City Attorney Mary Brown, who was on the phone call, then requested that City Manager Stanford Amos drive to City Hall and let both parties in. No agenda was provided for the meeting,".

RESPONSE:

(A). The City of Grenada (hereinafter "The City") admits the allegations contained in Mr. Prestridge's Open Meeting Complaint, but states that its failure to give notice was not a willful or intentional act. The City of Grenada is aware of the requirements under the Open Meetings Act

that require 1) “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...” and 2) that a “a copy of this notice shall be transmitted via email or facsimile not less than (1) hour before the meeting to any citizen and any publication, broadcast and digital media... that has submitted in writing its interest to receive these notices”. Further, The City is also aware of the requirements when the meeting is being held via teleconference or video. The City has always attempted to follow these guidelines.

The agenda and the notice of meetings are prepared and distributed by the City Manager, Mr. Stanford Amos. Mr. Amos’ Executive Secretary, Ms. Martha Profit, is tasked with completing and transmitting the aforementioned documents. The attached affidavit of Ms. Profit specifically states that on Friday, January 13, 2023, she prepared the agenda and the notice for the January 19 called meeting. The notice of the called meeting was signed by the Mayor and sent out to Council for their signatures. It was her intent to notify the media and the public on Tuesday, January 17, 2023. However, Ms. Profit did not report to work on Tuesday, January 17, 2023 because she was ill and consequently unable to return to work until, Monday, January 23, 2023. Unfortunately, in this instance, the normal procedure for giving notice of a called meeting was not followed because of Ms. Profit’s absence. The City has now put in place a procedure to insure that the notice requirement is followed in the future.

(B). The called meeting held on January 19, 2023 was a Teleconference Called Meeting. The City is aware of the guidelines set out in Section 25-41-5 (2)(3) of the Open Meetings Act and has followed these guidelines for having “equipment used” located at the place where the public body meets so that members of the public attending the meeting can hear the deliberations of the public body and having an agenda distributed to members of the public. During COVID, the Council Chamber, where the regular meetings of the Council are held, was open to the public and the City Manager and City Clerk were present to provide agendas and necessary equipment to allow the public to hear the deliberations. This is the procedure the city has followed for board meetings held via Zoom or Teleconference. As stated earlier, with the unexpected absence of the Ms. Profit, normal procedures for giving notice and other requirements of a Teleconference Called Meeting were not followed.

Mr. Prestridge also alleged that “It was obvious during the teleconference that several of the Councilmen were confused and did not know or understand what business was being presented”. The allegation that there was confusion among board members during the meeting is unfortunate. The City Council seldomly hold its board meeting via Zoom or Teleconference. In this instance, it was not that the board members were confused or did not understand what was happening. The fact of the matter was that the board members were having a little difficulty adjusting because this meeting was not being held in-person, as they normally are done.

2. ALLEGATION-No. M-23-002-

“...several members of the Council were witnessed by Adam Prestridge, publisher of the Grenada Star, eating together at a local restaurant.” Mr. Prestridge names Mayor and Pro-Tem Fredrick Wilson, Councilman Lewis Johnson, Councilman Michael D. Smith, Councilman, Eric Harris and City Attorney, Mary A. Brown. Mr. Prestridge states that the incident occurred on Thursday,

January 12, 2023 after a Council Meeting held on that date. Mr. Prestridge asserts that “We do not believe this was a chance meeting and know for a fact that it was not a social gathering”.

RESPONSE:

(A). As City Attorney, Mary Brown, does not fall within the definition of a public body as that term is defined pursuant to 25-4-3. Mary Brown is not a public elected official and therefore, the open meetings act is not applicable to City Attorney Mary Brown. Notwithstanding, the dinner at the Kennel Club, was a social event and is an exception to the open meeting statutory mandate.

A public body is defined “as any 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 in whole or party by public funds or expends public funds.:

(B). The respondents, Councilman/Mayor Pro-Tem, Frederick “Pete” Wilson (Ward 2), Councilman, Lewis Johnson (Ward 3), Councilman, Michael D. Smith (Ward 4) and Councilman Erick Harris (Ward 5) acknowledge that as duly elected council members that they fall within the definition of a public body and that their dinner outing held on Jan. 3, 2023 falls under the exception to the definition of meeting. MS Code Annotated 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 as supervision, control, jurisdiction or advisory power, including an assemblage through the use of video or teleconference devices that conforms to Section 25-41-5.”

The respondents assert that the dinner held on January 3, 2023 is excluded from the Open Meeting Act pursuant to “§ 25-41-17.

The facts as applied to the law support the position of the respondents that the dinner held after an open meeting constituted a social event. The respondents assert that no public business was discussed during the course of the dinner, as they had exhausted all council business during the open meeting and executive session held on that date.

The Open Meeting Act carves out exceptions only for executive sessions and “chance meeting or social gatherings of members of a public body” Sections 25-41-7 and 25-41-17.

The dinner in which the council members were present, was held after a duly noted public meeting. The dinner was purely a social event and did not include any other persons, charities, industries and business... furthermore there was no discussion of formation and determination of public policy . See., Gannett River States Pub. Corp., Inc. v City of Jackson, 866 So. 2d. 462, 466, (Miss. 2004), quoting Bd. of Trustees at 278.

The Supreme Court in Board of Trustees v Mississippi Publishers Corp, 478 So. 2d. 269, 278 (Miss., 1985), stated that “ official acts” include actions relating to the formation and

determination of public policy, but excludes purely social functions. The Supreme Court listed a number of facts to consider when determining whether an activity is business or social, to wit, (1) the activity that takes place; (2) advance call or notice, (3) agenda, (4) claim for per diem and travel expenses, and (5) other pertinent facts.

In 2017, The Supreme Court revisited the issues of whether a meeting is excluded as a social event in *City of Columbus v The Commercial Dispatch*, 234 So. 3d. 1236, 1240 (Miss., 2017) that 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.

The facts applied are as follows: (a) A quorum of council person were present for the noticed open public meeting held on January 12, 2023; (b) A quorum of council persons adjourned the public meeting and went into executive session according to law; (c) Minutes were duly taken of both the open meeting and the executive session; (d) The meeting was properly adjourned pursuant to law; (e) Council persons and the City Attorney ate dinner at The Kennel, a local restaurant in an open area; (f) No discussion regarding public matters were discussed during the meeting; (g) The dinner was paid for without public funds; and (h) no other persons were present at the dinner.

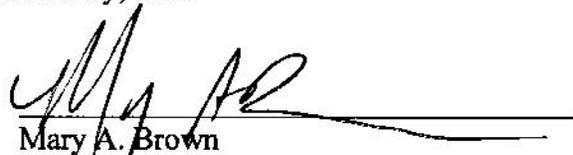
The Attorney General of Mississippi has reviewed similar issues. In the Attorney General Opinion Re; Ms. JoAnn J. Ladner, the Attorney General responded to the question whether 3 or more Aldermen may attend at the same time social gatherings, athletic events and club meetings if no municipal business is conducted. The Attorney General wrote:

... it is the long-standing position of this office that social gatherings or chance meetings are not covered by the Open Meeting Act, MS AG OP., Sipes (Feb. 15, 1995). See also *Board of Trustees v Mississippi Publishers Corp* 478 So. 2d. 269 (MS 1985). This assumes that no official business is discussed and no official actions are taken. The type of gatherings you have described in your request would normally be classified as being of a social or civic nature, and as long as the members of the Board of Aldermen refrain from discussing municipal affairs, they would not be in contravention of the Open Meetings Act. To require that no three members of a public body be in the same place at the same time for any reason would require a strict interpretation of the Act, and in many small towns would lead to an absurd result.”

Conclusion: The respondents are not in violation of the open meeting act. The dinner at The Kennel was a purely social event which occurred after a duly noticed open public meeting. There would be no need for the council members to discuss public business after exiting an open public meeting and executive session meeting wherein minutes were duly taken. The complaint should be dismissed.

City Attorney Mary Brown is not an elected official and is not subject to the statutory mandate.

Respectfully Submitted, this the 23rd day of February, 2023

A handwritten signature in black ink, appearing to read 'Mary A. Brown', is written over a horizontal line.

Mary A. Brown
Attorney-At-Law
Post Office Box 2046
Grenada, Mississippi 38902
MS BAR NO: 4661

AFFIDAVIT

STATE OF MISSISSIPPI
COUNTY OF GRENADA

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the county and state aforesaid, who being by me first duly sworn, deposes and says on oath as follows, to-wit:

1. My name is Martha Profit, Executive Secretary to the City Manager, Mayor, and Council for the City of Grenada, Mississippi;
2. One of my responsibilities as Executive Secretary is to prepare the agenda for all meetings, regular and special called.
3. On Friday, January 13, 2023, I prepared an agenda and a notice of a special called meeting to be held on Thursday, January 19, 2023. It was my intention to give notice of this special called meeting to the newspaper, city's web site and city's Facebook page on Tuesday, January 17, 2023.
4. However, I became ill over the weekend and was not able to return to work on Tuesday, January 17. I did not return to work until Monday, January 23, 2023.
5. I am aware of and it is my practice to follow the notice procedure contained in the Open Meeting Act. I became ill and did not have the opportunity to finish the required steps for notification of said meeting.



Martha Profit, Executive Secretary

SWORN TO AND SUBSCRIBED BEFORE ME, this the 23rd day of February 2023.



NOTARY PUBLIC

My Commission Expires:

