



MISSISSIPPI ETHICS COMMISSION

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

Case No. M-

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: White Shadrack Tucker
(Last) (First) (Middle)
Mailing Address: 520 George St Jackson MS 39202
(Street) (City) (State) (Zip Code)
Telephone No.: 601.969.1300 Email Address: white@msjustice.org
(Area Code, Prefix, Number)

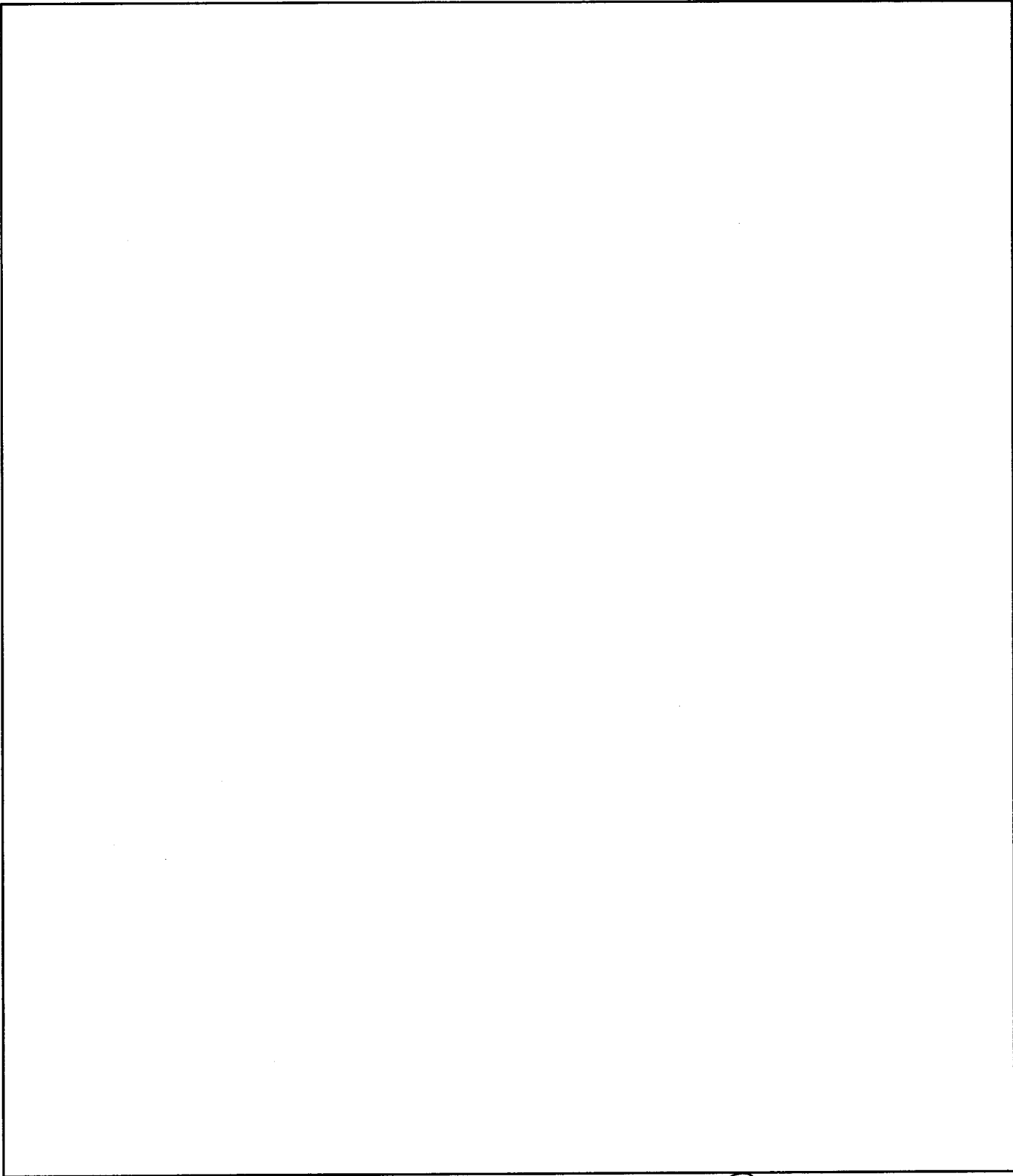
PUBLIC BODY AGAINST WHICH COMPLAINT IS MADE (Respondent):

Name of Public Body: City of Natchez Board of Aldermen
Name of Presiding Officer: Grennell Darryl V.
(Last) (First) (Middle)
Title or Position: Mayor
Mailing Address: 115 S. Pearl St Natchez MS 39120
(Street) (City) (State) (Zip Code)
Telephone No.: 601.445.7500 Email Address: mayor@natchez.ms.us
(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.

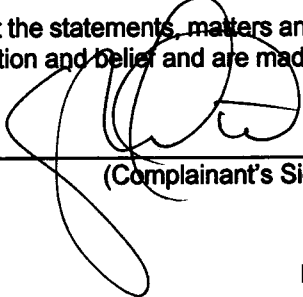
See attached.



I have read and understood everything in this complaint, and I certify that the statements, matters and allegations set forth in this complaint are true and correct to the best of my knowledge, information and belief and are made of my own free will.

5. 8. 18

(Date)



(Complainant's Signature)



May 8, 2018

Mississippi Ethics Commission
PO Box 22746
Jackson, MS 39225-7476

Re: Open Meetings Act allegation and statement of facts against the City of Natchez

To the Mississippi Ethics Commission:

The Board of Aldermen and Mayor of the City of Natchez violated the Open Meetings Act by conducting an illegal, closed-door executive session on May 3, 2018. That evening, the Board of Aldermen and Mayor of Natchez held a meeting to discuss who would receive the City's garbage collection and recycling contract. During the meeting, the Board and Mayor entered into an executive session. A video of the meeting shows that one member of the Board, Hon. Sarah Carter-Smith, expressed reticence about moving into a closed session, stating, "Because what we will be discussing, which is, we've already said, the RFP [for garbage collection] . . . having attorneys consulted, I'm uncomfortable discussing it [the contract] in executive session. And I read it the same way—that cities aren't exempt. I just want to publicly say that I would prefer that we do this [discuss the garbage contract] out in the open." Regardless, the Mayor and Board moved to executive session.

The Open Meetings Act says that a public body may enter executive session, but in order to do so, "[t]he reason for holding an executive session shall be stated in an open meeting, and the reason so stated shall be recorded in the minutes of the meeting." Miss. Code Ann. § 25-41-7(3). The list of topics that can trigger the right to an executive session are listed in Miss. Code Ann. § 25-41-7(4) and are exceptions to the open meetings requirement. These "exceptions to the statute are to be construed narrowly." *Gannett River States Pub. Corp. v. City of Jackson*, 866 So. 2d 462, 469 (Miss. 2004).

In this case, the Board of Aldermen and Mayor entered into executive sessions at least three times in recent weeks to discuss the City's garbage contract, first on April 23, 2018, second on May 1, and finally on May 3 (the meeting that is the subject of this complaint). The City's justification for entering these executive sessions was that they were discussing the "[t]ransaction of business and discussions or negotiations regarding the location, relocation or expansion of a business, medical service or an industry." Miss. Code Ann. § 25-41-7(4)(h). But this exemption does not apply to the discussion of city contracts.

On its face, this exemption was designed to protect discussion of topics like economic development projects. *See, e.g., Johnny Morgan*, 2004 WL 1379988, at *1 (Miss. A.G. May 21, 2004). If the Commission held that a contract discussion fell under this exemption, the scope of the exemption could grow to shroud nearly every function of local government in darkness. For example, if one believes a contract discussion is about the "expansion of a business," then discussions of infrastructure spending should also be about "expansion of a business," as businesses benefit and can expand when

the conditions of the roads around them improve. No exception should be "as broad as the law itself." Morgan at *1 (citing *Maser v. City of Canton*, 62 Ohio App. 2d 174, 180, 405 N.E.2d 731, 735 (Ohio Ct. App. 1978)). Ruling for Natchez would make this exemption as broad as the rule itself.

Such a broad reading of this exemption is also not allowable under the precedents set by Mississippi's Supreme Court. "The Open Meetings Act was enacted for the benefit of the public and is to be **construed liberally** in favor of the public. 'Openness in government is the public policy of this State.'" *Bd. of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, 478 So. 2d 269, 276 (Miss. 1985) (emphasis added) (citing *Mayor & Aldermen of City of Vicksburg v. Vicksburg Printing & Pub. Co.*, 434 So. 2d 1333, 1334 (Miss. 1983)).

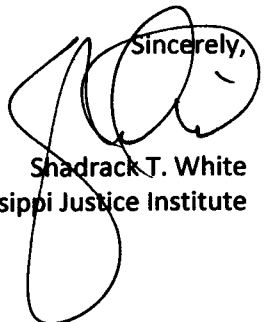
Mississippi's Attorney General said the same in 2002 when asked about contract negotiations at the Desoto County Convention Center. Anthony E. Nowak, 2002 WL 1833281, at *2 (Miss. A.G. July 10, 2002). The Attorney General was asked whether the Desoto County Convention and Visitors Bureau was allowed to "discuss contract negotiations regarding potential concerts and other events during an executive session." *Id.* at 1. The answer was no. The Attorney General stated that, "[u]nder the facts presented in your letter, it does not appear that the contract negotiations for sporting events, concerts and theatrical auditions qualify for an exemption under the Open Meetings Act." *Id.* at 2. The Attorney General even mentioned the existence of the exemption for discussing the "location, relocation or expansion of a business" but did not cite that exemption as applicable to contract negotiations. Put differently, the Attorney General did not believe talk about granting a vendor a contract would be talk about the "expansion of a business."

The Mississippi Ethics Commission should agree with this 2002 opinion by the Attorney General and rule that the discussions of contract negotiations in Natchez should have been held in the open. The City was discussing how to spend taxpayers' dollars. The taxpayers and reporters of Natchez deserve to know how the nearly \$1 million contract will be awarded.

The Ethics Commission has the power to "order the public body to take whatever reasonable measures necessary, if any, to comply with" the Open Meetings Act and to levy fines. Miss. Code Ann. § 25-41-15. The City, at minimum, should be required to discuss its garbage contract selection in public. We also request that the Commission impose whatever fines it deems necessary.

Finally, we note, again, that the occurrences in Natchez on May 3 were similar to what happened at Board meetings on April 23 and May 1. In the interest of economy, and given the identical justifications cited by the Board for its actions after each meeting, we request that consideration of our complaint be merged with complaints M-18-007 (the complaint regarding April 23) and M-18-008 (the complaint regarding May 1).

Thank you, and please let me know if you have questions about this complaint.

Sincerely,

Shadrack T. White
Director, Mississippi Justice Institute