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The Personnel Matters Exception to the Mississippi Open Meetings Act - A Cloud over the Sunshine Law - Board of Trustees of State Institutions of Higher Learning, et al. v. Mississippi Publishers Corp.

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THE PERSONNEL MATTERS EXCEPTION TO THE MISSISSIPPI
OPEN MEETINGS ACT—A CLOUD OVER THE SUNSHINE LAW

Board Of Trustees Of State Institutions Of Higher Learning, et al.,

v.

Mississippi Publishers Corp.,

478 So. 2d 269 (Miss. 1985).

In 1975, the Mississippi Legislature approved and enacted the Open Meetings Act.¹ Designed to frustrate and prevent secrecy and corruption in government, the Act compelled boards and agencies of state and local government to open their meetings to the public. This Act was welcomed by many, especially the press, who sought to monitor and report on the activities of these public bodies as they met to effectuate and promote public policy. Now however, the effectiveness of this Act may have been threatened by this recent decision of the Mississippi Supreme Court. The court has refused to affirm a lower court's ruling that the "personnel matters" exception² to the Open Meetings Act applies only when specific individuals are the subject of the discussion in the closed meeting.³ This decision leaves the phrase "personnel matters" undefined and open to various interpretations. Lack of a workable definition could not only make enforcement of the Act difficult but potentially allows the "personnel matters" exception to be used to "rob the open meetings act of its meaning."⁴

FACTS

On September 20, 1983, Mississippi Publishers Corporation, publisher of the *Clarion Ledger* and *Jackson Daily News* newspapers, filed suit in Hinds County Chancery Court⁵ against

1. 1975 Miss. Laws 481 and Miss. CODE ANN. § 25-41-1 (Supp. 1986).

2. Miss. CODE ANN. § 25-41-7(4)(a) (Supp. 1986).

3. Board of Trustees v. Miss. Publishers Corp., 478 So. 2d 269 (Miss. 1985).

4. *Id.* at 280.

5. Miss. Publishers Corp. v. Board of Trustees, No. 122,926 (Hinds Co. Ch. Ct., First Dist.) (1983).

the Board of Trustees of the State Institutions of Higher Learning⁶ alleging that the Board and its members were violating the Mississippi Open Meetings Act.⁷ The suit claimed that the Board was holding closed meetings with institutional executive officers on the day before its regular monthly meeting and that these meetings did not fall under the statutory exceptions to the Open Meetings Act and therefore should have been open to the public.⁸

The filing of the complaint was the direct result of an incident which occurred on September 14, 1983, when a reporter for the *Clarion Ledger* asked permission to attend a meeting of the Board and the individual executive officers of the various institutions of higher learning.⁹ The Board denied the request claiming that "personnel matters" would be discussed at the meeting.¹⁰ Mississippi Publishers Corporation alleged in its complaint that this meeting violated the Open Meetings Act because the topics discussed at the meeting, such as "enrollment growth at the University of Southern Mississippi, community support for Mississippi Valley State University, the placement of fraternities at the University of Mississippi on probation, and plans for change in the Jackson State University business school," did not come under the "personnel matters" exception.¹¹ Mississippi Publishers Corporation sought a declaration from the court that the Board had violated the Act and an injunction to prevent future violations.¹²

After a hearing, the chancellor issued a temporary injunction enjoining the Board from holding executive sessions to discuss matters that were not exempted from the Open Meetings Act¹³ and from using the "personnel matters" exception "without first finding that the session will involve the transaction of business and discussion of personnel matters or the character, professional competence, or physical or mental health of a person"¹⁴ In the opinion accompanying the preliminary injunction, the chancellor stated that the phrase "personnel matters" meant "the discussion of hiring, promotion, demotion, dismissal, assignment

6. The Board of Trustees of the State Institutions of Higher Learning is a constitutionally created state agency responsible for overseeing the operation of Mississippi's public colleges and universities. MISS. CONST. art. 8 § 213-A and MISS. CODE ANN. § 37-101-1 (1972).

7. Record at 5.

8. *Id.*

9. *Id.*

10. *Id.*

11. Record at 5, 6. In its answer, the Board of Trustees admitted that these topics were discussed during the September 14, 1983 meeting. Record at 79.

12. *Id.* at 8.

13. *Id.* at 71.

14. *Id.*

or resignation of or the investigation or consideration of complaints or charges against any individual public employee. Therefore, discussions with little, if any, focus on individuals are not exempt under the statute"¹⁵

Following a trial on the merits, the chancellor found that the Open Meetings Act had been violated and issued a permanent injunction against the Board.¹⁶ In the accompanying opinion the chancellor repeated his views on the "personnel matters" exception.¹⁷

The Board of Trustees appealed bringing nine assignments of error from the lower court.¹⁸ The Mississippi Supreme Court affirmed the decision on all issues but reversed the Chancellor's definition of "personnel matters."¹⁹

15. *Id.* at 67.

16. *Id.* at 1783. *Miss. Publishers Corp. v. Board of Trustees*, 9 Media L. Rep. (BNA) 2450, 2453 (Miss. Ch. 1983).

17. Record at 1781.

18. *Board of Trustees v. Miss. Publishers Corp.*, 478 So. 2d 269, 272-73 (Miss. 1983), and *infra* note 74.

19. 478 So. 2d at 280.

BACKGROUND AND HISTORY

A. Open Meeting Laws Generally

The open meetings laws now found in all fifty states²⁰ and the District of Columbia²¹ are not descendants of the common law²² but are the result of public dissatisfaction with the secrecy that surrounded the meetings of many government bodies. The first open meetings law was passed in Utah in 1898²³ when a statute was enacted requiring a city council to "sit with open doors." Other states began to add open meetings laws to their books in the 1950's after a group of newspaper editors began to fight for the right of the press and public to attend these governmental meetings, claiming "[t]he people have a right to know!"²⁴ By 1959, twenty states had enacted open meetings laws.²⁵ Then, as a result of Water-

20. ALA. CODE § 13A-14-2 (1982); ALASKA STAT. § 44.62.310-312 (1984 & Supp. 1986); ARIZ. REV. STAT. ANN. § 38-431 (1985); ARK. STAT. ANN. § 12-2801-2807 (1979 & Supp. 1985); CAL. GOV'T CODE § 54950-54957 (1983 & Supp. 1987); COLO. REV. STAT. § 24-6-401 to 24-6-402 (1982 & Supp. 1986); CONN. GEN. STAT. § 3-1-15 to 3-1-21 (1983 & Supp. 1986); DEL. CODE ANN. tit. 29 § 10001-10005 (1983); FLA. STAT. ANN. § 286.011 (West 1975 & Supp. 1987); GA. CODE ANN. § 50-14-1 to 50-14-4 (1986 & Supp. 1987); HAW. REV. STAT. § 92-1 to 13 (1985); IDAHO CODE § 67-2340 to 47 (1980 & Supp. 1987); ILL. ANN. STAT. ch. 102, para. 42 (Smith-Hurd Supp. 1987); IND. CODE ANN. § 5-14-1.5-1 to 1.5-7 (Burns 1987); IOWA CODE ANN. § 21.1 to 21.9 (West Supp. 1987); KAN. STAT. ANN. § 75-4317 to 4320a (1984 & Supp. 1986); KY. REV. STAT. ANN. § 61.805 to .845 (Baldwin 1985); LA. REV. STAT. ANN. § 42:4.1 to 42:4.12 (West Supp. 1986); ME. REV. STAT. ANN. tit. 1 § 401 to 410 (1979 & Supp. 1986); MD. STATE GOV'T CODE ANN. § 10-501 to 10-510 (1984 & Supp. 1986); MASS. ANN. LAWS ch. 30A § 11A ½ (Law. Co-op. 1983); MICH. COMP. LAWS ANN. § 15.261 to .268 (West 1981 & Supp. 1987); MINN. STAT. ANN. § 471.705 (West 1977 & Supp. 1987); MISS. CODE ANN. § 25-41-1 to 25-41-7 (Supp. 1986); MO. ANN. STAT. § 610.010-610.120 (Vernon 1979 & Supp. 1987); MONT. CODE ANN. § 2-3-201 to 213 (1985); NEB. REV. STAT. § 84-1408 to 84-1414 (1981 & Supp. 1986); NEV. REV. STAT. ANN. § 241.010 to 241.030 (Michie 1986); N.H. REV. STAT. ANN. § 91-A: 1 to A: 8 (1978 & Supp. 1986); N.J. STAT. ANN. § 10:4-6 to 10:4-21 (West 1976 & Supp. 1987); N.M. STAT. ANN. § 10-15-1 to 10-15-4 (1985); N.Y. PUB. OFF. LAW § 100 to 111 (McKinney Supp. 1986); N.C. GEN. STAT. § 143-318.9 to .18 (1983 & Supp. 1985); N.D. CENT. CODE § 44-04-19 to 44-04-21 (1978 & Supp. 1987); OHIO REV. CODE ANN. § 121.22 (Baldwin 1987); OKLA. STAT. ANN. tit. 25 § 301 to 314 (West 1987); OR. REV. STAT. § 192.610 to .690 (1985); PA. STAT. ANN. tit. 65 § 271 to 286 (Purdon Supp. 1987); R.I. GEN. LAWS § 42-46-1 to 42-46-10 (1984 & Supp. 1986); S.C. CODE ANN. § 30-4-10 to 30-4-110 (Law. Co-op. Supp. 1986); S.D. CODIFIED LAWS ANN. § 1-25-1 to 1-25-4 (1985 & Supp. 1987); TENN. CODE ANN. § 8-44-101 to 8-44-107 (1980 & Supp. 1986); TEX. REV. CIV. STAT. ANN. art. 6252-17 (Vernon 1970 & Supp. 1987); UTAH CODE ANN. § 52-4-1 to 52-4-9 (1981); VT. STAT. ANN. tit. 1 § 311-315 (1985); VA. CODE ANN. § 2.1-340 to 2.1-346.1 (1987); WASH. REV. CODE ANN. § 42.30.010 to 42.30.920 (1972 & Supp. 1987); W. VA. CODE § 6-9A-1 to 6-9A-7 (Supp. 1987); WIS. STAT. ANN. § 19.81 to .85 (West Supp. 1986); WYO. STAT. § 16-4-401 to 16-4-407 (1982).

21. D.C. CODE ANN. § 1-1521 to 1528 (1987).

22. H. Cleveland, *The Costs and Benefits of Openness: Sunshine Laws and Higher Education*, 12 J. COLL. & UNIV. L. 127 (1985).

23. 1898 Utah Laws § 202, cited in Note, *Common Cause v. Utah Public Service Commission - The Applicability of Open-Meeting Legislation to Quasi-Judicial Bodies*, 4 UTAH L. REV. 829 (1980).

24. Note, *Open Meetings Statutes: The Press Fights for the "Right to Know,"* 75 HARV. L. REV. 1199 (1962).

25. Cleveland, *supra* note 22, at 132.

gate, the public's frustration at corruption and secrecy in government grew, and by 1974, forty-six states had enacted open meetings laws.²⁶ In 1977, the number reached fifty.²⁷

B. Rationale Behind Personnel Exceptions

Most states recognize that there are occasions when government must operate free from public scrutiny to be effective.²⁸ This realization has led to the adoption of certain recognized exceptions to open meetings laws. One of these exceptions involves discussions relating to personnel. This exception is justified on the grounds that discussions which relate to areas such as hiring, firing, or disciplining could unjustly damage the reputation of an employee. It is also contended that discussion of such matters in secret benefits the public by permitting efficient personnel management²⁹ and by attracting qualified personnel to public service by assuring that their privacy will be respected.³⁰

C. The Mississippi Open Meetings Act

The Mississippi Open Meetings Act was approved by the Mississippi Legislature in 1975 and took effect on January 1, 1976.³¹ So that there would be no question regarding the purpose of the Act, a statement of legislative intent prefaces the Act. It reads as follows:

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.³²

When the Act was first passed, an executive session was permitted any time three-fifths of the members present voted to close the meeting.³³ In 1981, the Mississippi Legislature amended the Act to eliminate this provision and replaced it with a list of specific

26. *Id.*

27. *Id.*

28. Comment, *Access to Governmental Information in California*, 54 CALIF. L. REV. 1650 (1966).

29. Note, *supra* note 24, at 1208.

30. Comment, *Open Meetings In Virginia: Fortifying the Virginia Freedom of Information Act*, 8 U. RICH. L. REV. 261 (1974).

31. 1975 Miss. Laws 481 and Miss. CODE ANN. § 25-41-1 (Supp. 1986).

32. *Id.*

33. 1975 Miss. Laws 481 § 4.

topics that could be discussed in a closed session.³⁴

The exception which gave rise to the present case is set out in Section 25-41-7(4)(a), which permits an executive session when the discussion relates to the "[t]ransaction of business and discussion of personnel matters or the character, professional compe-

34. 1981 Miss. Laws 456, and Miss. CODE ANN. § 25-41-7 (Supp. 1986) set out the requirements for conducting an executive session and the list of statutory exceptions.

Section 25-41-7. Executive Sessions:

- (1) Any public body may enter into executive session for the transaction of public business; provided, however, all meetings of any such public body shall commence as an open meeting, and an affirmative vote of three-fifths (3/5) of all members present shall be required to declare an executive session.
- (2) The procedure to be followed by any public body in declaring an executive session shall be as follows: Any member shall have the right to request by motion a closed determination upon the issue of whether or not to declare an executive session. Such motion, by majority vote, shall require the meeting to be closed for a preliminary determination of the necessity for executive session. No other business shall be transacted until the discussion of the nature of the matter requiring executive session has been completed and a vote, as required in subsection (1) hereof, has been taken on the issue.
- (3) An executive session shall be limited to matters allowed to be exempted from open meetings by subsection (4) of this section. The reason for holding such an executive session shall be stated in an open meeting, and the reason so stated shall be recorded in the minutes of the meeting. Nothing in this section 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 chapter.
- (4) A public body may hold an executive session pursuant to this section for one or more of the following reasons:
 - (a) Transaction of business and discussion of personnel matters or the character, professional competence, or physical or mental health of a person.
 - (b) Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.
 - (c) Transaction of business and discussion regarding the report, development or course of action regarding security personnel, plans or devices.
 - (d) Investigative proceedings by any public body regarding allegations of misconduct or violation of law.
 - (e) Any body of the Legislature which is meeting on matters within the jurisdiction of such body.
 - (f) Cases of extraordinary emergency which would pose immediate or irrevocable harm or damage to persons and/or property within the jurisdiction of such public body.
 - (g) Transaction of business and discussion regarding the prospective purchase, sale or leasing of lands.
 - (h) Discussions between a school board and individual students who attend a school within the jurisdiction of such school board or the parents or teachers of such students regarding problems of such students or their parents or teachers.
 - (i) Transaction of business and discussion concerning the preparation of tests for admission to practice in recognized professions.
 - (j) Transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business or an industry.
 - (k) Transaction of business and discussions regarding employment and termination of employees. The exemption provided by this paragraph includes the right to hold closed meetings concerning employees as such exemption relates to their deletion from any budget subject to approval of the public body. Final budgetary adoption shall not be taken in executive session.
- (5) The total vote on the question of entering into an executive session shall be recorded and spread upon the minutes of such public body.
- (6) Any such vote whereby executive session is declared shall be applicable only to that particular meeting on that particular day.

tence, or physical or mental health of a person." This section is similar to exceptions included in the statutes of other states.³⁵ Like Mississippi, other states have considered whether the exception applies when the discussion concerns only general employee matters, or whether it is restricted to those discussions which involve individual employees.

At the time the Mississippi Supreme Court was called upon to decide the "personnel matters" issue in the present case, there were no prior Mississippi cases on point which the court could look to for guidance. There were, however, statutes and cases from other states, attorneys' general opinions, and articles in various law journals that the court could have used as a guide in determining what meaning should be attributed to the phrase "personnel matters."

D. Persuasive Authority

1. Statutes of Other States

As previously mentioned, the majority of states have an exception to their open meetings laws that allows discussions relating to employees or personnel to be discussed in closed sessions.³⁶ Only eight states, including Mississippi, actually use the phrase "personnel matters" in their statutes.³⁷ Of these, only New Mexico statutorily defines "personnel matters"³⁸ as "the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employees" This definition was added to the New Mexico Open Meetings Act in 1979,³⁹ possibly in response to the 1976 decision of the New Mexico Supreme Court in *State v. Hernandez*,⁴⁰ where the phrase "personnel matters" was interpreted to "refer[] to a body of persons, such as a body of employees, and not to 'an employee.'"⁴¹ The New Mexico Legislature obviously realized that such an interpre-

35. See Appendix A for portions of statutes from states having a personnel exception to their open meetings laws.

36. *Id.*

37. DEL. CODE ANN. tit. 29 § 10004(b)(9) (Supp. 1986); KAN. STAT. ANN. § 75-4319(b)(1) (1984); MD. STATE GOV'T. CODE ANN. § 10-508(a)(1)(ii) (1984); MISS. CODE ANN. § 25-41-7(4)(a) (Supp. 1986); N.M. STAT. ANN. § 10-15-1(E)(2) (1985); S.D. CODIFIED LAWS ANN. § 1-25-2 (1985); TENN. CODE ANN. § 8-44-102(b)(2) (Supp. 1986); W. VA. CODE § 6-9A-4(2) (1987).

38. N.M. STAT. ANN. § 10-15-1(E)(2) (1985).

39. 1979 N.M. Laws 366.

40. 89 N.M. 698, 556 P.2d 1174 (1976).

41. *Id.* at 699, 556 P.2d at 1175.

tation would lead to abuses and thus took matters into hand and applied what it considered to be the proper definition.

In Delaware, the exception applies only when "[p]ersonnel matters in which the names, competency and abilities of individual employees or students are discussed."⁴² Maryland uses a similar construction; "any other personnel matter that affects 1 or more specific individuals."⁴³ Kansas allows closed meetings when the discussion relates to "[p]ersonnel matters of non-elected personnel."⁴⁴ The Attorney General of Kansas has interpreted this statute to mean that a hospital's salary schedules, budgets, room rates or other financial affairs could not be discussed in an executive session but salaries for hospital employees could be as long as the discussion focused on individuals.⁴⁵

Tennessee,⁴⁶ West Virginia,⁴⁷ and South Dakota⁴⁸ all use the phrase "personnel matters" in their statutes but these statutes are not worded in such a way as to permit any conclusions to be drawn about the definition of the phrase. At present, neither these states nor their respective attorney generals have defined the phrase.

With the exception of three states⁴⁹ that have no exceptions to their open meetings laws, the remaining states all word their personnel exception differently but without using the phrase "personnel matters."⁵⁰ No state specifically allows a closed session to discuss general employee matters.

2. *Judicial Decisions*

Mississippi is only one of several states where courts have been asked to determine if the personnel exception applies to general employee discussions or whether it is limited to discussions relating to specific individual employees. As noted earlier, up until the time of the present Mississippi case, the New Mexico Supreme Court was the only court to have interpreted a statute which used

42. DEL. CODE ANN. tit. 29 § 10004(b)(9) (Supp. 1986).

43. MD. STATE GOV'T. CODE ANN. § 10-508(a)(1)(ii) (1984).

44. KAN. STAT. ANN. § 75-4319(b)(1) (1984).

45. Kan. Att'y Gen. Op. 81-39 (1981).

46. TENN. CODE ANN. § 8-44-102(b)(2) (Supp. 1986). (Applies to certain non-profit corporations contracting with the state).

47. W. VA. CODE § 6-9A-4(2) (1987).

48. S.D. CODIFIED LAWS ANN. § 1-25-2 (1985).

49. Florida, Minnesota, and North Dakota have no exemptions to their open meeting laws which allow for closed sessions to discuss matters involving employees or personnel although Minnesota does allow a closed session when the body is "exercising quasi-judicial functions involving disciplinary proceedings." MINN. STAT. ANN. § 471.705(1) (West Supp. 1987).

50. See *supra* note 35.

the phrase "personnel matters."⁵¹ This is also the only court that has held that a broad interpretation should be applied to the exception.⁵² This ruling has apparently been negated by the New Mexico Legislature which has amended its act to include a narrowly drawn definition of the phrase "personnel matters."⁵³ The other courts have consistently held that the personnel exception applied only when specific individuals were being discussed. In *Jefferson County Board of Education v. Courier-Journal*,⁵⁴ The Court of Appeals of Kentucky held that the discussion of the potential dismissal of all the employees of a public educational television station concerned only "a general personnel matter" and "was not the proper subject of a closed session."⁵⁵ The effect of a broadly construed personnel exception was succinctly stated in *Maser v. City of Canton*⁵⁶ where the Court of Appeals of Ohio stated that unless the personnel exception was limited to discussions of personnel controlled directly by the city council that "it would provide an exception to the law as broad as the law itself, for what subject cannot be considered somehow to affect all municipal employees or personnel."⁵⁷ The Court of Appeals of Missouri, Western District, stated in *Hudson v. School District of Kansas City*⁵⁸ that closed sessions which involved discussions relating to the transfer and furloughing of several hundred school teachers and personnel had little if any focus on individuals and should have been conducted in public.⁵⁹ In *Oughton v. Board of Fire Commissioners*⁶⁰ the Superior Court of New Jersey, Law Division, held that a closed meeting of the Moorestown Fire Commissioners, where the position of administrator was created and the salary agreed upon, was improper because "[n]o discussion of any specific officer or employee was involved."⁶¹ In *Sonstelie v. Board of Trustees for School District No. 10, Flathead County*,⁶² the Montana Supreme Court said "[t]he Open Meeting Act allows a presiding officer to close the meeting 'during the time the dis-

51. *State v. Hernandez*, 89 N.M. 698, 556 P.2d 1174 (1976).

52. *Id.* at 699, 556 P.2d at 1175.

53. 1979 N.M. Laws 366, N.M. STAT. ANN. § 10-15-1(E)(2) (1985).

54. 551 S.W.2d 25 (Ky. Ct. App. 1977).

55. *Id.* at 28.

56. 62 Ohio App. 2d 174, 405 N.E.2d 731 (1978).

57. *Id.* at 180, 405 N.E.2d at 735.

58. 578 S.W.2d 301 (Mo. Ct. App. 1979).

59. *Id.* at 310.

60. 178 N.J. Super. 633, 429 A.2d 1096, *aff'd in part, rev'd in part*, 178 N.J. Super. 565, 429 A.2d 1059, *cert. denied*, 87 N.J. 367, 434 A.2d 1055 (1981).

61. 178 N.J. Super. at 643, 429 A.2d at 1101.

62. 202 Mont. 414, 658 P.2d 413 (1983).

cussion relates to a matter of individual privacy' where the officer has determined that 'the demands of individual privacy clearly exceed the merits of public disclosure.'"⁶³

3. Attorneys General Opinions

An attorney general's opinion is a non-binding advisory statement of the attorney general's interpretation of a particular statute and how it should be applied. These opinions are usually issued only upon a formal request from an elected or appointed government official trying to determine what the law is and whether it applies in a specific situation. Because open meetings laws are relatively new and because they are applicable to government boards and agencies, there have been a number of opinions issued by the attorney generals of various states concerning different aspects of these laws.

In Mississippi, the attorney general has never issued an official opinion concerning the meaning of the phrase "personnel matters" as it applies to the Open Meetings Act.⁶⁴

In 1979, the National Association of Attorneys General published a book entitled *Open Meetings: Exceptions to State Laws*. A segment of this book deals exclusively with the "personnel matters" exception and contains a compilation of attorneys general opinions on the subject. Opinions from the attorney generals of nine states are discussed under the heading "Persons Covered by the Exception."⁶⁵ While the book goes into depth on the specific language of each of these opinions,⁶⁶ the general view is found in the introductory paragraph; "A general rule is that personnel exceptions apply to specific individuals and not to groups or classes of employees. Discussions of personnel questions involving general policy towards a group or class of employees, without refer-

63. *Id.* at 421, 658 P.2d at 417.

64. In 1986, after this case was decided, the Mississippi Attorney General's Office, in conjunction with the Mississippi State Bar, issued a handbook to be used as a guide in applying the Open Meetings Act. This booklet is prefaced by an introduction which states that in and of itself, it is not an official attorney general opinion but only a guide for applying the law. With regard to personnel matters, the booklet states: "There is no legal definition of 'personnel matters,' but discussion with little, if any, focus on individuals - for instance, discussions of an across-the-board pay raise - would not be included in the 'personnel matter' definition under current case law or opinions of the Attorney Generals." Mississippi State Bar and Mississippi Attorney General's Office, *A GUIDE TO MISSISSIPPI'S OPEN MEETING AND OPEN RECORD LAWS* (1986).

65. The National Association of Attorneys General, *OPEN MEETINGS: EXCEPTIONS TO STATE LAWS* (1979) construing Ark. Att'y Gen. Op. 77-144 (1977); Cal. Att'y Gen. Op. 11 66-184 (1966); Hawaii Att'y Gen. Op. 75-11 (1975); Ill. Att'y Gen. Op. S-959 (1975) and 1116 (1976); Iowa Att'y Gen. Op. 71-6-11 (1971); La. Att'y Gen. Op. 76-1421 (1976); Mo. Att'y Gen. Op. 144 (1975); Okla. Att'y Gen. Op. 76-334 (1976); and Tex. Att'y Gen. Op. H-496 (1975).

66. *Id.* at 30-34.

ence to an individual employee, fall outside the provisions of every personnel exception."⁶⁷ Opinions issued since 1979 are in accord.⁶⁸ No opinion has been found which takes an opposite point of view.

4. *Law Journals and Professional Publications*

Open Meeting Laws, or more specifically, the lack of or abuse of them, is a popular topic in law journals and other legal publications. Some of these articles contain comprehensive evaluations of open meetings laws. Since the question of the extent to which the personnel exception will apply is crucial to the overall effectiveness of these laws, this issue is often discussed.

In one such article, *The Cost and Benefits of Openness: Sunshine Laws and Higher Education*, the author⁶⁹ notes the difference between the two types of personnel exceptions; "narrow (only those discussions that might directly impinge upon an individual's privacy or cause damage to his or her character . . .), or broad (any discussion regarding individual employment or other individual personnel matters . . .). No case is made for exempting discussions about personnel policy in general."⁷⁰

In *The University in the Sunshine: Application of the Open Meeting Laws to the University Setting*, published in the *Journal of Law and Education*,⁷¹ the author states "[a] personnel exemption would seem to apply to meetings pertaining to the hiring, firing, promotion, tenure, demotion, disciplining, nor (sic) compensation of individual employees of the university."⁷²

There are also numerous law review articles written about open meetings laws which include discussions on the personnel exceptions.⁷³ No articles have been found which advocate acceptance of a broad interpretation of personnel exceptions.

67. *Id.* at 30.

68. See *supra* note 45 and Cal. Att'y Gen. Op. 79-1207, 63 Ops. Cal. Att'y Gen. 153 (1980).

69. Cleveland, *supra* note 22.

70. *Id.* at 137. It is interesting to note that this article was attached to Appellants' (Board of Trustees) Rebuttal Brief and Reply to Cross Assignment of Error.

71. Shurtz, *The University in the Sunshine: Application of the Open Meeting Laws to the University Setting*, 5 J. OF L. & EDUC. 453 (1976).

72. *Id.* at 458.

73. See e.g. Comment, *Open Meetings Laws: An Analysis And A Proposal*, 45 Miss. L.J. 1151 (1974).

INSTANT CASE

Writing for the court, Justice Prather disposed of the other eight issues raised by the Board⁷⁴ before addressing the present issue of whether the lower court had defined the phrase "personnel matters" in a manner that was more restrictive than that found in the Act. In part VII of the opinion,⁷⁵ the court said that while the term "personnel" cannot be used to rob the Open Meetings Act of its meaning, the lower court's statement that "all Board discussions with institutional executive officers do not involve 'personnel matters'" narrowed "the verbage [sic] of the Act."⁷⁶ The court reversed the chancellor's definition of the term "personnel" stating that be-

74. The issues raised on appeal by the Board of Trustees were:

- (1) The lower court erred in holding that the Open Meetings Act is constitutional as applied to the Board insofar as the application of the Act prevents the Board from managing and controlling the institutions of higher learning to the best advantage of the people of the state.
- (2) The lower court erred in holding that the Board has no power to promulgate additional exemptions to open meetings.
- (3) The lower court erred in sustaining the Plaintiff's objection to the testimony of Ben Stone.
- (4) The lower court erred in holding that the Board's Wednesday morning sessions with institutional executive officers are "meetings" within the meaning of the Act.
- (5) The lower court erred in holding that the Board's luncheons with student government officials are "meetings" within the meaning of the Act.
- (6) The lower court erred in holding that the Board is required to record by individual member, the vote taken to go into executive session.
- (7) The lower court erred in requiring the Board to make certain findings a part of its record prior to entering into executive session concerning personnel and litigation matters.
- (8) The lower court erred in finding that the Board had used executive sessions to defeat the purpose of the Act by conducting telephone polls.

The court held:

- (1) That the Open Meetings Law is constitutional as applied to the Board of Trustees;
- (2) That the Board's attempt to promulgate additional exemptions to the Open Meetings Law was "repugnant", "contrary to" and in violation of the Act;
- (3) This issue was not mentioned in the court's written opinion;
- (4) That these meetings are part of the deliberative stage that leads to the formation of public policy and under the Open Meetings Act should be open to the public;
- (5) That these luncheons with student government officials involve discussions which constitute deliberations leading to the "formation of public policy" and were therefore "official acts" which must be open to the public;
- (6) That the Act requires that the "total vote, by the individual members' expression", must be recorded in the minutes;
- (7) That the Board must make certain findings a part of its record before entering into an executive session; and
- (8) That the Board could not "circumvent the act" by conducting telephone polls.

Mississippi Publishers Corporation cross-appealed claiming that it was entitled to attorneys fees under 42 U.S.C. § 1983 and § 1988 because its constitutional rights had been violated. The court dismissed the cross appeal stating that the newspaper was not entitled to any relief under 42 U.S.C. § 1983 that it had not already obtained under state law. *Board of Trustees v. Miss. Publishers Corp.*, 478 So. 2d 269 (1985).

75. 478 So. 2d 269, 280.

76. *Id.*

cause the term was undefined, Section 1-3-65 of the *Mississippi Code* required that the term be given its "common and ordinary acceptance and meaning."⁷⁷ Therefore, the court stated that it could only adopt the ordinary definition of the term "personnel."⁷⁸

The court went on to say that any further definition would be addressed by the court on a case by case basis using the general rules of statutory construction and the legislative intent of the Act as a guide.⁷⁹ At the conclusion of the discussion Justice Prather wrote "[t]his Court adopts the verbage [sic] of the Act regarding 'personnel' matters."⁸⁰

After the opinion was handed down, Mississippi Publishers Corporation petitioned the court for a rehearing claiming that the court's decision had left the issue unresolved and that the phrase needed defining so that the Open Meetings Act could be enforced. This petition for rehearing was denied by the court without comment.⁸¹

ANALYSIS AND CONCLUSION

The major problem with the court's decision in this case is not so much that the chancellor's definition was reversed,⁸² but that the court did not define the phrase "personnel matters."⁸³ No reason is given in the written opinion of the court as to why the issue is left unresolved. One might speculate, based on the court's two references to the fact that the phrase is statutorily undefined, that the court would rather the legislature define the phrase.⁸⁴

Another clue may be found in the conclusion of the court's opinion where Justice Prather states that the court "affirms the action of the chancery court, with the minor exception of the personnel definition"⁸⁵ If the court saw the question of the definition of the phrase as such a minor matter, then it seems that the court failed to foresee the repercussions that could and have resulted from leaving the phrase undefined. No matter whether the court intentionally refused to define the phrase or whether it simply did

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. Petition for Rehearing of Appellee Mississippi Publishers Corporation, Board of Trustees v. Miss. Publishers Corp., 478 So. 2d 269, (Miss. 1985) (No. 56,167), *reh'g denied*, Nov. 4, 1985.

82. 478 So. 2d 269, 280.

83. *Id.*

84. *Id.*

85. *Id.* at 282.

not think it was necessary to do so, the court missed two opportunities⁸⁶ to clarify the meaning of this phrase in a manner that could be followed and enforced. As it stands now, the meaning of the phrase is susceptible to whatever definition that someone might deem consistent with the "verbage [sic] of the Act,"⁸⁷ and is almost totally unenforceable because apparently only the court knows what the "verbage [sic] of the Act"⁸⁸ is and the court is not saying.

The basis for the court's belief that the chancellor's definition narrowed "the verbage [sic] of the Act"⁸⁹ may be the result of a misinterpretation of the statement in the chancellor's written opinion that "all Board discussions with institutional executive officers do not involve 'personnel matters.'"⁹⁰ The court's opinion indicates that it believed that the chancellor said that none of the Board meetings with the institutional executive officers could be closed under the personnel matters exception. However, when this statement is read in context within which it was written,⁹¹ which was omitted from the supreme court's written opinion,⁹² the sentence is qualified so that the proper interpretation is that only those "personnel matter" discussions that involve specific individuals could be held in executive session.⁹³

The definition of "personnel" set out by the chancellor is identical to that used in the New Mexico Open Meetings Act.⁹⁴ This fact was brought out to the court in Mississippi Publishers Corporation's brief.⁹⁵ Additionally, Mississippi Publishers Corporation cited three cases⁹⁶ in support of the chancellor's conclusion that the personnel exception should apply only when the discus-

86. The issue was raised in the original appeal and by Mississippi Publishers Corporation in its Petition for Rehearing, *supra* note 81.

87. 478 So. 2d 269, 280.

88. *Id.*

89. *Id.*

90. *Id.* and *infra* note 91.

91. The full text of the chancellor's statement, which may be found in the record at 1781 and in 9 Med. L. Rep. at 2452 is as follows:

In the opinion of this Court, all Board discussions with institutional executive officers do not involve 'personnel matters,' and the phrase 'personnel matters' should not be interpreted to rob the Open Meetings Act of all its meaning. In the opinion of the Court, 'personnel matters' means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee. Therefore, discussions with little, if any, focus on individuals are not exempt under the statute in the opinion of this Court.

92. 478 So. 2d 269, 280.

93. *Supra* note 91.

94. N.M. STAT. ANN. § 10-15-1(E)(2) (1985).

95. Brief for Appellee and Cross-Appellant, 47.

96. *State v. Hernandez*, 89 N.M. 698, 556 P.2d 1174 (1976); *Maser v. City of Canton*, 62 Ohio App. 2d 174, 405 N.E.2d 731 (1978); and *Hudson v. School Dist.*, 578 S.W.2d 301 (Mo. 1979).

sion related to specific individuals. The Board contended that the word personnel was usually defined in the plural sense and that applying this definition to the phrase would allow for closed meetings even when the discussion involved groups of personnel.⁹⁷ Neither side cited in their briefs the section of the *Mississippi Code* upon which the court based its decision.⁹⁸

Since the court does not say what the “common and ordinary acceptation and meaning”⁹⁹ of the phrase “personnel” is, resort must be had to the dictionary for guidance. *Webster's New Collegiate Dictionary* defines personnel as “a body of persons usu. employed.”¹⁰⁰ Applying this definition to the Open Meetings Act, a meeting could be closed anytime the discussion related to a matter that in any way involved an employee, thus creating a broad exception which could render the Act ineffective.

This is well illustrated by the recent decision in *Common Cause v. Hinds County Board of Supervisors*¹⁰¹ which was decided after the opinion in the present case was handed down. Claiming to use the supreme court's decision as guidance, the chancellor stated that the phrase “personnel matters” was not limited to one employee but covered employees in any way that employees are affected. He went on to say that the exception was not limited to personnel discussions that involved an employee's personal privacy but could include discussions relating to “‘insurance,’ ‘holidays,’ ‘parking spaces,’ ‘architects’ and even ‘Ross Barnett Reservoir’”¹⁰²

If the “personnel matters” exception is extended to cover the situations listed by the chancellor then open meetings will become the exception rather than the rule. Every decision of every governmental board, agency, department, or bureau is concerned with employees in some manner, whether it be their own employees or those who may work for a different agency of government but who are affected by decisions of another agency. The potential for abuse of a broad personnel exception is significant. A secret meeting to discuss “insurance”¹⁰³ or “parking spaces”¹⁰⁴ makes a mockery of the declaration of legislative intent¹⁰⁵ which says that “the formation and determination of public policy is public busi-

97. Brief For Appellant, 36-37.

98. Miss. CODE ANN. § 1-3-65 (1972 & Supp. 1986).

99. Board of Trustees v. Miss. Publishers Corp., 478 So. 2d 269, 280 (Miss. 1985).

100. WEBSTER'S NEW COLLEGIATE DICTIONARY 849 (1981).

101. Common Cause v. Hinds County Bd. of Supervisors, No. 118,528 (Hinds Co. Ch. Ct. First Dist. August 18, 1986).

102. *Id.* at 106, 107.

103. *Id.* at 106.

104. *Id.*

105. 1975 Miss. Laws 481 § 1 and Miss. CODE ANN. § 25-41-1 (Supp. 1986).

ness and shall be conducted at open meetings”¹⁰⁶ This is the reason that the Mississippi Legislature amended the Open Meetings Act to limit the circumstances under which a meeting could be closed.¹⁰⁷ The legislature obviously recognized that the original provision allowing members to close the meeting for any reason upon a three-fifths majority vote, presented too great an opportunity for abuse. The fact that a personnel exception was included indicates that the legislature realized that there are times when a person’s privacy right will exceed the public’s right to know.

To set guidelines for the “personnel matters” exception using the common definition of the word “personnel” creates a broader exception than the legislature intended and one that is inconsistent with the open meetings laws of other states.¹⁰⁸ Even with the dictionary definition of personnel being what it is, the court could have adopted the lower court’s definition¹⁰⁹ and then rested its decision upon rules of statutory construction.¹¹⁰ The court notes that any future definition of the phrase “personnel matters” would be addressed on a case by case basis using “our general rules of statutory definition” along with the legislative intent of the Act.¹¹¹ Had the court considered all the available rules of statutory construction, the issue might now be settled. Instead, the court chose, for unknown reasons, to base its decision on only one of these rules and it is not clear that the court applied it properly. The court says that the term “personnel” is not defined in the statute and that “[w]hen a word is statutorily undefined, its use is of its common and ordinary acceptance and meaning It appears that this Court can only adopt the ordinary definition of the term ‘personnel,’ in the absence of a statutory definition.”¹¹² An examination of Section 1-3-65 of the *Mississippi Code*, the statute the court relied upon,¹¹³ reveals a discrepancy between the actual language of the statute and the court’s interpretation. Section 1-3-65 says nothing about statutorily undefined words; what it says is that “[a]ll words and phrases contained in the statute are used according to their common and ordinary acceptance and meaning; but technical words and phrases according to their technical meaning.”¹¹⁴ *Webster’s New Collegiate Dictionary* states that technical can mean

106. *Id.*

107. 1981 Miss. Laws 456.

108. See Appendix A.

109. See *supra* note 91.

110. *Board of Trustees v. Miss. Publishers Corp.*, 478 So. 2d 269, 280 (Miss. 1985).

111. *Id.*

112. *Id.*

113. *Id.*

114. MISS. CODE ANN. § 1-3-65 (1972 & Supp. 1986).

"of or relating to a particular subject or marked by a strict legal interpretation."¹¹⁵ The court does not discuss or even mention that the phrase "personnel matters" could be considered a technical term when used in conjunction with the Open Meetings Act and that a unique definition might apply.

This aside, there are other devices set out both in the *Mississippi Code* and in prior Mississippi Supreme Court cases that are relevant to the issue of statutory interpretation. At least three discuss using the ordinary meanings of words found in statutes.¹¹⁶ These cases state that the common definition of the word must be used unless there is evidence that a different interpretation is intended. It would seem that using a definition of a word that creates a broad exception to the Open Meetings Act and which conflicts with the legislatively decreed purpose of the Act,¹¹⁷ would be sufficient to indicate that a special definition was needed.

A review of other statutory construction aids reveals that the intent of the legislature is one of the most important factors to be looked at when interpreting the language of a statute. One example is found in Section 1-3-33 of the *Mississippi Code* which states that words which are used to describe either persons or things, when used in the singular shall include the plural and words in the plural shall include the singular, "except where a contrary intention is manifest." This indicates that it is not important whether the word takes the singular or plural form but that the word should be interpreted in the context of the statute. This type of statute is apparently common and a leading treatise on statutory construction has a section devoted to a discussion on how singular or plural form words in a statute should be treated.¹¹⁸ This section states that " 'the grammatical form of words must give way if it conflicts with the legislative intent; and where such is the case, words in the singular may be construed as plural, and vice versa.' " ¹¹⁹ Applying this section to the present case, it would be immaterial that "personnel" is commonly defined in the plural.

Another statutory construction device recognized in Mississippi¹²⁰ is the doctrine of *noscitur a sociis* or associated words. This allows the meaning of an ambiguous word or phrase

115. WEBSTER'S NEW COLLEGIATE DICTIONARY 1188 (1981).

116. *Clark v. State*, 198 Miss. 88, 21 So. 2d 296 (1945); *State v. Lee*, 196 Miss. 311, 17 So. 2d 277 (1944); and *Texas Co. v. Wheelless*, 185 Miss. 799, 187 So. 880 (1939).

117. MISS. CODE ANN. § 25-41-1 (Supp. 1986).

118. N. Singer, *Sutherland Statutory Construction* § 47.34 (4th ed. 1984) quoting McKinney's Statutes of New York, Ann. § 252 (1971).

119. *Id.*

120. *Evans v. City of Jackson*, 202 Miss. 9, 30 So. 2d 315 (1947).

in a statute to be ascertained from its physical relationship to other words in the statute. Applying this doctrine, legislative limitation on the word "personnel" could be inferred from the phrase "or the character, professional competence, or physical or mental health of a person"¹²¹ which immediately follows the phrase "personnel matters" in the statute.¹²² This phrase obviously refers to subject matter that would be discussed only with reference to specific individuals. Therefore, it is presumed that the "personnel matters" are those of specific individuals also.

Prior decisions of the Mississippi Supreme Court also provide guidance in interpreting statutes. In *State ex rel. Patterson v. Board of Supervisors*¹²³ the court said that words, phrases and sentences in a statute should not be considered in the abstract but with regard to the context so as to harmonize the word or phrase in question with the other parts of the statute.¹²⁴ In *Mississippi Cottonseed Products Co. v. Stone*,¹²⁵ the court said that the legislative intent must be gathered from the statute as a whole and not from a segregated portion considered apart from the rest.¹²⁶ *Wray v. Kelly*¹²⁷ says that when a statute is susceptible of more than one interpretation, words may be substituted and interpretation must be with reference to the subject matter of the statute and in line with legislative intent.¹²⁸

The uniqueness of the Open Meetings Act must also be taken into account. In the present case, the court noted, as have courts in other states, that "[t]he Open Meetings Act was enacted for the benefit of the public and is to be construed liberally in favor of the public."¹²⁹ This follows from the generally accepted theory that where a statute is enacted for the public's benefit, it is to be

121. MISS. CODE ANN. § 25-41-7(4)(a) (Supp. 1986).

122. *Id.*

123. 233 Miss. 240, 102 So. 2d 198 (1958).

124. *Id.* 102 So. 2d 198.

125. 184 Miss. 409, 184 So. 428, *cert. denied*, 306 U.S. 656 (1939).

126. *Id.* 184 So. 428.

127. 98 Miss. 172, 53 So. 492 (1910).

128. *Id.* 53 So. 492. There is authority which allows the assumption to be drawn that when the legislature adopts a statute used by another state then it can be assumed that the legislature meant to adopt the construction used by those states. This is found in *Marqueze v. Caldwell*, 48 Miss. 23, 31 (1873), and was cited by Mississippi Publishers Corporation in its brief supporting the petition for rehearing; Brief in Support of Petition For Rehearing Of Appellee Mississippi Publishers Corporation at 9, *Board of Trustees v. Miss. Publishers Corp.*, 478 So. 2d 269 (Miss. 1985) (No. 56,167).

129. 478 So. 2d 269, 276; see *Laman v. McCord*, 245 Ark. 401, 432 S.W.2d 753 (1986); *Board of Pub. Instruction v. Doran*, 224 So. 2d 693 (Fla. 1969); *Del. Solid Waste Auth. v. News-Journal Co.*, 480 A.2d 628 (Del. 1984); *Wexford County Prosecuting Attorney v. Pranger*, 83 Mich. App. 197, 268 N.W.2d 344 (1978); *Grein v. Board of Educ.*, 216 Neb. 158, 343 N.W.2d 718 (1984); *City of Danville v. Laird*, 223 Va. 271, 288 S.E.2d 429 (1982).

given a liberal interpretation and any exception must be construed narrowly.¹³⁰

As previously mentioned, most statutory construction aids focus on legislative intent. In *Mayor and Alderman v. Vicksburg Printing and Publishing Co.*,¹³¹ Justice Robertson discussed the intent of the legislature in promulgating the Open Meetings Act in some detail. He stated that no matter how inconvenient openness may be, "it is the legislatively decreed policy of this state."¹³² In order to comply with this legislatively decreed policy of openness,¹³³ the phrase "personnel matters" must be construed in such a manner as to provide the narrowest possible exception to the Act. A broad definition would destroy the integrity of the Act by allowing the personnel matters exception to become a catch-all exception which could be used to close meetings at will.

For whatever reason the court did not define the phrase in the present case, it should not allow another opportunity to pass without attaching a definition to it. It must not simply "adopt the verbage [sic] of the Act"¹³⁴ again, as trying to determine what the "verbage [sic] of the Act"¹³⁵ is regarding an already undefined phrase is at best an exercise in futility. The court should consider all available information and factors and particularly it should consider the underlying purpose of a personnel exception - the protection of individual reputations - before it defines the phrase.¹³⁶ Alternatively the legislature could define the phrase, using as a guide some of the precisely drafted statutes of the other states.¹³⁷ In order for the Mississippi Open Meetings Act to operate as was intended, to protect the public's right to know, closed meetings must be the exception rather than the rule.

Richard A. Oakes

130. 73 Am. Jur. 2d *Statutes* § 313 (1974).

131. 434 So. 2d 1333 (Miss. 1983).

132. *Id.* at 1336.

133. *Id.*

134. *Board of Trustees v. Miss. Publishers Corp.*, 478 So. 2d 269, 280 (Miss. 1985).

135. *Id.*

136. In *Cabell v. Markham*, Circuit Judge Learned Hand commented that while "it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing . . . it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish" 148 F.2d 737, 739 (2d Cir. 1945), *cert. granted*, 325 U.S. 847 (1945), *aff'd*, 326 U.S. 404 (1945).

137. See *supra* note 35.

APPENDIX A

In order to thoroughly analyze the present issue, it was necessary to examine the open meeting laws of all fifty states and the District of Columbia to determine if the statute contained an exemption using the phrase "personnel matters." This examination revealed a wide diversity in the means used to accomplish basically the same ends. The pertinent language of these statutes, the attorneys general opinions and judicial decisions, interpreting and deciding issues related to these particular statutes are included in this appendix because, while some do not contain the phrase "personnel matters," they go to the more central issue of what should be the purpose of a "personnel matters" exemption.

ALABAMA

ALA. CODE § 13A-14-2(a) (1986).

"No executive or secret session shall be held . . . except . . . when the character or good name of a woman or man is involved."

Miglionico v. Birmingham News Co., 378 So. 2d 677, 681 (Ala. 1979).

"We believe that the legislature intended by the use of the words 'character' or 'good name' to permit executive sessions whenever there is a discussion of one's general reputation, i.e., the estimate the public places on a person, his reputation, good or bad, and the personal attributes of an individual. It might also include such personal traits as honesty, loyalty, integrity, reliability, and other such characteristics, good or bad, which makes up one's individual personality. A discussion of any person relating to such matters may therefore, under § 13-5-1, be permitted at an executive session."

Dale v. Birmingham News Co., 10 Media L. Rep.,(BNA) 2011, 2013, 452 So. 2d 1321, 1323 (Ala. 1984).

"Under this statute all meetings of these bodies named, whether formal or informal, whether or not an official vote is taken, must be open to the public, except where the character or good name of a person is involved."

ALASKA

ALASKA STAT. § 44.62.310(c)(2) (1984 & Supp. 1986).

"[S]ubjects that tend to prejudice the reputation and character of any person"

ARIZONA

ARIZ. REV. STAT. ANN. § 38-431.03(A)(1) (1985).

"Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of any public body"

ARKANSAS

ARK. STAT. ANN. § 12-2805 (1985).

"Executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining or resignation of any public officer or employee."

Ark. Att'y Gen. Op. 77-144 (1977).

"Questions relating to the salary of a particular public officer or employee would be a proper subject of discussion in an executive session An executive session to discuss general salary matters would not be proper."

CALIFORNIA

CAL. GOV'T CODE § 54957 (West 1983).

"[T]o consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against such employee"

63 Op. Cal. Att'y Gen. 153 (1980).

"[T]he subject of the work loads of particular individuals would be a proper subject for executive session"

COLORADO

COLO. REV. STAT. § 24-6-402(2.5) (1982).

"[T]o consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee"

CONNECTICUT

CONN. GEN. STAT. § 3-1-18(e)(1) (1983).

"[D]iscussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual"

DELAWARE

DEL. CODE ANN. tit. 29 § 10004(b)(9) (1983 & Supp. 1986).

"[P]ersonnel matters in which the names, competency and abilities of individual employees or students are discussed"

GEORGIA

GA. CODE ANN. § 50-14-4(6)(A) (1986).

"[A]ny agency is discussing the appointment, employment, disciplinary action, or dismissal of a public officer or employee."

HAWAII

HAW. REV. STAT. § 92-5(a)(2) (1985).

"[T]o consider the hire (sic), evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee where consideration of matters affecting privacy will be involved; provided that if the individual concerned"

Hawaii Att'y Gen. Op. 75-11 (1975) *construed in* The National Association of Attorneys General, OPEN MEETINGS: EXCEPTIONS TO STATE LAWS (1979).

"[W]here the *primary purpose of the meeting* is to consider the hire, (sic) evaluation, dismissal, or discipline of a *specific individual*."

IDAHO

IDAHO CODE § 67-2345(1)(b) (1980 & Supp. 1987).

"[T]o consider the evaluation, dismissal, or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent"

ILLINOIS

ILL. ANN. STAT. ch. 102, para. 42 (Smith-Hurd Supp. 1987).

"[T]o consider information regarding appointment, employment or dismissal of an employee or officer or to hear testimony on a complaint lodged against an employee or officer"

Ill. Att'y Gen. Op. S-726 (1974) *construed in* The National Association of Attorneys General, OPEN MEETINGS: EXCEPTIONS TO STATE LAWS (1979).

"The language of the statute, an employee or officer, limits its operation to an individual and does not include a class of employees or officers."

INDIANA

IND. CODE ANN. § 5-14-1.5-6(a)(5) (Burns 1987).

"[W]ith respect to any individual over whom the governing body has jurisdiction: (A) to receive information concerning the individual's alleged misconduct, and (B) to discuss, prior to any determination, that individual's status as an employee, student or independent contractor who is a physician."

IOWA

IOWA CODE ANN. § 21.5(1)(i) (West Supp. 1987).

"[T]o evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation"

Iowa Att'y Gen. Op. 71-6-11 (1971) *construed in* The National Association of Attorneys General, OPEN MEETINGS: EXCEPTIONS TO STATE LAWS (1979).

"The development of general policies in regard to personnel . . . [does not fall within the exception because no] irreparable and needless injury . . . [would be done to anyone's reputation]."

KANSAS

KAN. STAT. ANN. § 75-4319(b)(1) (1984).

"[P]ersonnel matters of non-elected personnel;"

KENTUCKY

KY. REV. STAT. ANN. § 61.810(6) (Baldwin 1985).

"Discussions or hearings which might lead to the appointment, discipline or dismissal of an individual employee, member or student"

Courier-Journal v. University of Louisville Bd. of Trustees, 596 S.W.2d 374, 378-79 (Ky. Ct. App. 1979), *reh'g denied* (1980).

"[T]his exception is designed to protect the reputation of individual persons and shall not be interpreted to permit discussions of general personnel matters in secret."

Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25, 28 (Ky. Ct. App. 1977).

"The discussion, however, dealt only with a general personnel matter and accordingly, was not the proper subject of a closed session."

LOUISIANA

LA. REV. STAT. ANN. § 42:6.1(A)(1) (West Supp. 1987).

"[D]iscussion of the character, professional competence, or physical or mental health of a person, provided that such person"

La. Att'y Gen. Op. 76-1421 (1976) *construed in* The National Association of Attorneys General, OPEN MEETINGS: EXCEPTIONS TO STATE LAWS (1979).

"[T]o discuss personnel problems involving a single individual."

MAINE

ME. REV. STAT. ANN. tit. 1 § 405(6)(A)(1) (1975).

"An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated."

MARYLAND

MD. STATE GOV'T CODE ANN. § 10-508(a)(1)(ii) (1984).

"[A]ny other personnel matter that affects 1 or more specific individuals."

MASSACHUSETTS

MASS. ANN. LAWS ch. 30A § 11A½(1) (Law. Co-op. 1983).

"To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual"

MICHIGAN

MICH. COMP. LAWS ANN. § 15.268(8)(a) (West 1981).

"To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual agent, when the named person"

MISSOURI

MO. ANN. STAT. § 610.025(3) (Vernon Supp. 1987).

"Any non judicial mental health proceedings and proceedings involving physical health, scholastic probation, scholastic expulsion or scholastic graduation, welfare cases, meetings relating to the hiring, firing, disciplining or promotion of personnel of a public governmental body"

Hudson v. School District of Kansas City, 578 S.W.2d 301, 310 (Mo. Ct. App. 1979).

"[W]ere not solely with respect to individual personnel problems, but were policy decisions with respect to programs and administration which should have been decided in an open meeting."

Mo. Att'y Gen. Op. 144 (1975) *construed in* The National Association of Attorneys General, OPEN MEETINGS: EXCEPTIONS TO STATE LAWS (1979).

"Meetings of these public governmental bodies for the purpose of discussing budgetary matters affecting personnel as a group, rather than on an individual level, are not authorized to be closed and must, therefore, be open to the public."

MONTANA

MONT. CODE ANN. § 2-3-203(2) (1985).

"[D]uring the time the discussion relates to a matter of individual privacy"

Sonstelie v. Board of Trustees, 202 Mont. 414, 418, 658 P.2d 413, 417 (1983).

"The Open Meeting Act allows a presiding officer to close the meeting 'during the time the discussion relates to a matter of individual privacy' where the officer has determined that 'the demands of individual privacy clearly exceed the merits of public disclosure'."

NEVADA

NEV. REV. STAT. ANN. § 241.030(1) (Michie 1986).

"[T]o consider the character, alleged misconduct, professional competence, or physical or mental health of a person."

NEBRASKA

NEB. REV. STAT. § 84-1410(1) (1943 & Supp. 1986).

"[F]or the protection of the public interest or for the prevention of needless injury to the reputation of an individual"

NEW HAMPSHIRE

N.H. REV. STAT. ANN. § 91-A:3(II)(a) and (c) (1978 & Supp. 1985).

(a) "the dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him" (c) "Matters which, if discussed in public, likely would affect adversely the reputation of any person"

NEW JERSEY

N.J. STAT. ANN. § 10:4-12(b)(3) (West 1976).

"Any material the disclosure of which constitutes an unwarranted invasion of individual privacy"

Oughton v. Board of Fire Commissioners, 178 N.J. Super. 633, 638, 429 A.2d 1096, 1101, *aff'd in part, rev'd in part*, 178 N.J. Super. 565, 429 A.2d 1059, *cert. denied*, 87 N.J. 367, 434 A.2d 1055 (1981).

"No discussion of any specific officer was involved. The matter does not fall within any exception to the law"

NEW MEXICO

N.M. STAT. ANN. § 10-15-1(E)(2) (1985).

"[P]ersonnel matters; provided that for purposes of this act, 'personnel matters' means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee;"

NEW YORK

N.Y. PUB. OFF. LAW § 7-105(1)(f) (McKinney Supp. 1987).

"[T]he medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation"

NORTH CAROLINA

N.C. GEN. STAT. § 143-318.11(8) (1983).

"To consider the qualification, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of a public officer or employee or prospective public officer or employee"

OHIO

OHIO REV. CODE ANN. § 121.22(G)(1) (Baldwin 1987).

"[T]o consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual."

OKLAHOMA

OKLA. STAT. ANN. tit. 25 § 307 (West 1987).

"[O]nly for the purpose of discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee"

Okla. Att'y Gen. Op. 76-334 (1976)

"[N]o executive session can be held by a local school board for discussion of collective employment matters not related to the qualification of any individual."

OREGON

OR. REV. STAT. § 192.660(1)(b) (1985).

"To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent"

PENNSYLVANIA

PA. STAT. ANN. tit. 65, § 278(a)(1) (Purdon Supp. 1987).

"To discuss any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee. . . ."

RHODE ISLAND

R.I. GEN. LAWS § 42-46-5(1) (1984).

"Any discussions of the job performance, character, physical or mental health of a person or persons"

SOUTH CAROLINA

S.C. CODE ANN. § 30-4-40(a)(2) (Law. Co-op. & Supp. 1986).

"Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy"

SOUTH DAKOTA

S.D. CODIFIED LAWS ANN. § 1-25-2 (1985).

"[F]or the sole purpose of considering student, employee and personnel matters;"

TENNESSEE

TENN. CODE ANN. § 8-44-102(b)(2) (Supp. 1986).

"[E]xcept such meetings of the board of directors of such non-profit corporation that are called solely to discuss matters involving confidential doctor-patient relationships, personnel matters"

TEXAS

TEX. REV. CIV. STAT. ANN. art. 6252-17(2)(g) (Vernon Supp. 1987).

"[I]n cases involving the appointment, employment, evaluation, reassignment, duties, disciplining, or dismissal of a public officer or employee"

Cox Enterprises, Inc. v. Board of Trustees, 706 S.W.2d 956, 958 (Texas 1986) construing Texas Att'y Gen. Op. H-1045 (1977).

"The primary interest protected . . . is that in avoiding possible unjustified harm to the reputation of the individual officer or employee under consideration."

UTAH

UTAH CODE ANN. § 52-4-5(1)(a) (1982).

"Discussion of the character, professional competence, or physical or mental health of an individual;"

VERMONT

VT. STAT. ANN. tit. 1, § 313(3)(4) (1985).

(3) "The appointment or employment or evaluation of a public officer or an employee;" (4) "A disciplinary or dismissal action against a public officer or an employee;"

VIRGINIA

VA. CODE ANN. § 2.1-344(1) and (3) (1987).

(1) "Discussion or consideration of employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of public officers, appointees or employees of any public body, . . . where such matters regarding such individuals"

(3) "The protection of the privacy of individuals in personal matters not related to public business."

WASHINGTON

WASH. REV. CODE ANN. § 42.30.110(1)(f) (1987).

"To receive and evaluate complaints or charges brought against a public officer or employee."

WEST VIRGINIA

W. VA. CODE § 6-9A-4(2) (1987).

"The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any public officer or employee, or other personnel matters"

WISCONSIN

WIS. STAT. ANN. § 19.85(1)(f) (West 1986).

"Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration or specific personnel problems or the investigation of charges against specific persons... which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to"

WYOMING

WYO. STAT. § 16-4-405(a)(ii) (1982).

"To consider the appointment, employment, right to practice or dismissal of a public officer, professional person or employee, or to hear complaints or charges brought against an employee, professional person, or officer"

DISTRICT OF COLUMBIA

D.C. CODE ANN. § 1-1524(a)(2) (1987).

"Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;"

