19-ORD-229

December 18, 2019

In re: Rev. Russell Claxon/Green and Orange Cab Company

Summary: Green and Orange Cab Company is not a "public agency" as defined by KRS 61.870(1)(h) and is not subject to the Open Records Act ("the Act"). Therefore, the Attorney General finds no violation of the Act.

Open Records Decision

On September 26, 2019, Rev. Russell Claxon ("Appellant") requested certain records from the Green and Orange Cab Company ("Company") relating to its business license, its taxi license, the identity of its drivers, and any public complaints lodged against the Company or its drivers. Appellant also requested from the Company, "your contract with FTSB[1] and/or the state of Kentucky," and "[a]ll records of payments made to your company within the last 5 years."

Having received no response to his initial request, Appellant mailed a follow-up letter to the Company on October 15, 2019, but received no response. On October 29, 2019, Appellant mailed a second follow-up letter to the Company, but received no response. On November 12, 2019, Appellant appealed the apparent denial of his requests to this Office, stating that the Company "provides transport for Medicaid members to their medical appointments."

[1] "FTSB" is the abbreviation for Federated Transportation Services of the Bluegrass, Inc. FTSB is a private non-profit corporation that provides public transportation and Medicaid broker services for thirteen counties in the Commonwealth of Kentucky. http://ftsb.org/ (last visited December 4, 2019).

Appellant argued that the Company and its owners have contracts with FTSB and the Commonwealth of Kentucky to provide transportation services to Medicaid recipients. Appellant argued, "[s]ince [the Company] and Owners receive state funds and tax money [the Company] and the Owners are bound to provide documents." However, Appellant provided no evidence that the Company or its owners have contracts with FTSB or the Commonwealth of Kentucky.

Analysis: Appellant argued that the Company meets the definition of a "public agency," because it derives funds from providing services to Medicaid recipients, or alternatively because it derives funds from a contract with the Commonwealth to provide services, and is therefore subject to the requirements of the Act. However, KRS 61.870(1)(h) defines a "public agency" as:

> Any body which, within any fiscal year, derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. However, any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection[.]

This Office has consistently recognized that a private company comes within the purview of the Act only if it derives at least 25% of its funds from state or local authority funds and otherwise does not fall within the definition of a "public agency" pursuant to KRS 61.870(1)(a)-(k). OAG 90-63; 06-ORD-275.

The Company failed to respond to this Office's notification of appeal dated November 18, 2019, and the burden of proof in these appeals is assigned to the agency resisting disclosure. KRS 61.880(2)(c). However, the record on appeal does not support Appellant's claim that the Company is a "public agency" for purposes of the Act. As such, the Company carries no burden of proof.

No evidence exists in the record showing that the Company provides services to Medicaid recipients under a contract with FTSB or the Commonwealth of Kentucky. Even if Appellant had provided this evidence, this

Office has found that Medicare and Medicaid funds do not constitute "state or local authority funds" in determining whether an entity meets the definition of a "public agency" pursuant to KRS 61.870(1)(h). In 93-ORD-90, this Office found that a radiology practice owned by a private physician was not a "public agency" for purposes of the Act simply because it was compensated through Medicare and Medicaid for professional services rendered to patients. The Attorney General reasoned that, merely because private physicians receive state or public funds as reimbursement for their services, they do not become "public agencies," as "they would be discouraged from serving senior citizens and the poor, who benefit from the Medicare and Medicaid programs." *Id.*, pp. 9-10. Accordingly, Medicare and Medicaid funds do not constitute "state or local authority funds" in determining whether an entity receives 25% or more of its funds from public coffers. *Id.*, p. 10.

Finally, KRS 61.878(1)(h) specifically exempts companies that receive "any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process" from the definition of "public agency". The record contains no evidence the Company is a party to a public competitive procurement contract with the Commonwealth, but even if it did, KRS 61.878(1)(h) is clear that the contract would not transform the private company into a public agency.

The record on appeal does not support Appellant's claim that the Company is a "public agency" within the meaning of KRS 61.878(1)(h). Accordingly, the Company is not subject to the requirements of the Act and cannot be found in violation.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceeding.

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Distributed to:

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