



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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20-OMD-003

January 14, 2020

In re: Lawrence Trageser/Spencer County Judge/Executive

*Summary:* The Spencer County Judge/Executive violated KRS 61.810(1) and KRS 61.815(1)(a) by failing to give notice in a regular open meeting of the general nature of the business to be discussed in closed session and the specific provision authorizing the closed session discussion, and violated KRS 61.815(1)(d) by discussing in a closed session matters other than those publicly announced prior to convening the closed session.

*Open Meetings Decision*

The question presented in this appeal is whether the Spencer County Judge/Executive ("Judge/Executive") violated the Open Meetings Act ("Act") by engaging in a discussion, during a closed session of the Spencer County Fiscal Court ("Fiscal Court"), of business not publicly announced prior to going into closed session. For the reasons set forth below, this Office finds that the Judge/Executive violated KRS 61.810(1), KRS 61.815(1)(a) and KRS 61.815(1)(d) of the Act.

On November 13, 2019, Appellant submitted an Open Meetings Complaint to Spencer County Attorney Ken Jones ("County Attorney"), stating that the Judge/Executive violated the Act by initiating a discussion about Appellant during a closed session of a Fiscal Court meeting. Appellant also stated that the subject of the closed session discussion did not fall within any of the open meetings exceptions provided for in KRS 61.810. Appellant requested

as relief that the Judge/Executive, “[c]ease and desist illegal discussion of topics that are not within the legal confounds of executive session...[.]” “apologize to [Appellant] for his remarks and discouraging words...[.]” and “apologize at the next [Fiscal Court] meeting to the public for his illegal activities in violating the [Act].”

On November 21, 2019, the Judge/Executive responded to the Complaint by denying the allegations and refusing to comply with the requested relief. On November 26, 2019, Appellant forwarded the Judge/Executive’s response to the County Attorney and requested relief. On December 4, 2019, the County Attorney replied, “I concur that discussions regarding you, in executive session, were improper.” The County Attorney provided Appellant a copy of a remedial email he intended to send each Fiscal Court member to address closed session discussions, but he stated that apologies to Appellant and the public “will be difficult to obtain.”

On December 22, 2019, Appellant appealed to this Office alleging that the Judge/Executive violated KRS 61.810(1), KRS 61.815(1)(a), and KRS 61.815(1)(d). Appellant stated that the Judge/Executive, “has not met the relief that Complainant has requested[.]” On December 30, 2019, the County Attorney responded to the appeal, stating that the Complaint is now moot. The County Attorney conceded that “[o]ne of the topics proper for discussion in executive session, wandered into a specific discussion of [Appellant],” but stated that the Judge/Executive provided a remedy in the form of the email regarding future compliance with the Act. Regarding Appellant’s requested relief, the County Attorney stated, “the Complaint is vague with regard to what specific relief is requested, and...Spencer County has responded to the open meetings complaint, appropriately under the statute.”

### **The Open Meetings Appeal is not Moot.**

The Judge/Executive asks that this Office find the Complaint moot because he conceded a violation of the Act and provided remedies to address the issues, but Appellant disputes the adequacy of the remedies. In relevant part, KRS 61.846(3)(a) provides:

“If a public agency agrees to remedy an alleged violation...and the person who submitted the written complaint...believes that the agency’s efforts in this regard are inadequate, the person may complain to the Attorney General.”

The Act further requires that when an Appellant believes the remedial efforts are inadequate, “the adjudicatory process... shall govern as if the public agency had denied the original complaint.” KRS 61.846(3)(c). Accordingly, the Complaint is not moot.

**The Judge/Executive Violated KRS 61.810(1).**

On appeal, the Judge/Executive conceded that he initiated an impromptu discussion regarding Appellant during a portion of the Fiscal Court meeting conducted in closed session. When a quorum of a public agency convenes to discuss public business, a meeting occurs, and such meetings are open to the public unless one or more of the exceptions codified at KRS 61.810(1)<sup>1</sup> is properly invoked. 06-OMD-262; 13-OMD-144. The evidence in the record shows that the discussion regarding Appellant occurred during a session closed to the public, and the Fiscal Court did not properly invoke an exception authorizing this discussion. Accordingly, this Office finds a violation of KRS 61.810(1).

**The Judge/Executive Violated KRS 61.815(1)(a) and KRS 61.815(1)(d).**

On appeal, the Judge/Executive conceded that he did not provide advanced notice to the public in regular session that discussions regarding Appellant would occur during the closed session. KRS 61.815(1) provides the notice requirements for closed session discussions of public business, stating:

(1) Except as provided in subsection (2) of this section, the following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:

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<sup>1</sup> KRS 61.810(1) provides: “[a]ll meetings of a quorum of the members of any public agency at which any public business is discussed *or* at which any action is taken by the agency, shall be public meetings, open to the public at all times, except for the following [enumerated exceptions].”

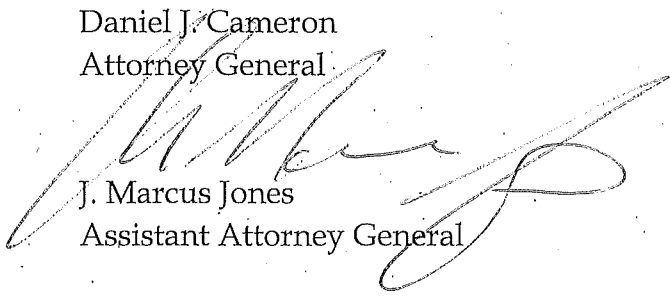
(a) Notice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session; ...and

(d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.

The express purpose of these, as well as the other provisions of the Act, "is to maximize notice of public meetings and actions ... [t]he failure to comply with the strict letter of the law in conducting meetings of a public agency violates the public good." *Floyd County Bd. of Educ. v. Ratliff*, 955 S.W.2d 921, 923 (Ky. 1997) (citing *E.W. Scripps Co. v. City of Maysville*, 790 S.W.2d 450 (Ky. App. 1990)). With specific reference to KRS 61.815, the Supreme Court declared that prior to going into closed session, "the public agency must state the specific exception contained in the statute which it relied upon," and give "*specific and complete notification...of any and all topics which are to be discussed during the closed meeting.*" *Id.* at 924 (emphasis added). The evidence in the record shows that the Judge/Executive admittedly failed to give notice in the regular open meeting that Appellant would be part of the business discussed in closed session, and failed to provide notice of the specific provision of KRS 61.810 authorizing the discussion of Appellant in closed session. Accordingly, this Office finds a violation of KRS 61.815(1)(a) and KRS 61.815(1)(d).

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.846(4)(a). 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 proceedings.

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20-OMD-003

Page 5

#484

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