



COMMONWEALTH OF KENTUCKY
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In re: *The Lake News*/Marshall County Fiscal Court

Summary: The Marshall County Fiscal Court (“the Fiscal Court”) violated the Open Meetings Act (“the Act”) when it failed to issue a written response to a complaint within three business days. The Fiscal Court also violated the Act when it failed to make an effort, under emergency circumstances, to notify media organizations of a special meeting as required by KRS 61.823(5).

Open Meetings Decision

On December 22, 2021, in a written complaint to the presiding officer of the Fiscal Court, *The Lake News* (“Appellant”) alleged that the Fiscal Court had violated the Act by failing to notify the Appellant of its emergency meeting on December 16, 2021. The Appellant is a media organization that has requested notice of special meetings pursuant to KRS 61.823(4). Having received no response to its complaint by January 12, 2022, the Appellant initiated this appeal.

Upon receiving a complaint alleging a violation of the Act, a “public agency shall determine within three (3) [business] days . . . after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision.” KRS 61.846(1). Here, the Fiscal Court violated the Act when it failed to respond to the Appellant’s complaint.

Under KRS 61.823(4)(a), prior to a special meeting, “[a]s soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to . . . each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The

notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting.” This notice requirement may be satisfied by e-mail when the media organization states a preference to be notified by e-mail. KRS 61.823(4)(b). The Appellant claims that it did not receive an e-mail notification of the meeting on December 16, 2021, despite its prior written request to receive such notices.

On appeal, the Fiscal Court argues that it was not required to notify the Appellant of its December 16 meeting because it was an “emergency meeting.”¹ The Fiscal Court is incorrect. KRS 61.823(5) governs the conduct of a special meeting “[i]n the case of an emergency which prevents compliance with” the notice requirements of KRS 61.823. When an emergency meeting is called, “[t]he public agency shall make a reasonable effort, under emergency circumstances, to notify the members of the agency, *media organizations which have filed a written request* pursuant to subsection (4)(a) of [KRS 61.823], and the public of the emergency meeting.” KRS 61.823(5) (emphasis added).

The Fiscal Court explains that the December 16 meeting was convened to approve certain contracts related to the state of emergency declared in Marshall County due to extensive damage caused by tornadoes on December 10 and 11, 2021. During the days leading up to the meeting, the County Judge/Executive and his staff “spent almost no time in the office and were instead out in the field attending to emergency matters.” Also, “[p]arts of the county had no internet or wireless service for several days, and in areas that did have service, it was both limited and sporadic.” The Fiscal Court states that the emergency meeting was “scheduled in a rush when it became known that time was of the essence in terms of getting boots on the ground for cleanup reimbursement purposes,” and due to the communication outages “[i]t was difficult . . . to even make contact and confirm availability for all members of the Fiscal Court.”

The existence of a state of emergency and the catastrophic nature of the tornado damage in Marshall County, including interruptions in electronic communications, are undisputed. These tornadoes were among the worst natural disasters to affect the Commonwealth in its entire history. This Office recognizes the chaotic state of affairs in Marshall County, which demanded swift attention by the Fiscal Court on matters of public order and public safety,

¹ Although the Fiscal Court claims that “emergency meetings” are not “special called meetings,” the Act does not make this distinction. Rather, KRS 61.823(5) describes an emergency meeting as a “special meeting” held “[i]n the case of an emergency.” Thus, while all special meetings are not emergency meetings, all emergency meetings are special meetings.

and is sympathetic to the fact that the Fiscal Court's attention was correctly focused on the pressing needs of the relief effort. However, KRS 61.823(5) requires a public agency, in emergency circumstances, to "make a reasonable effort" to notify not only its members, but also media organizations and the public, of a special emergency meeting. The Fiscal Court incorrectly argues that it was entirely relieved of its duty under KRS 61.823(5) to make reasonable efforts to notify the Appellant of the emergency meeting. The Fiscal Court therefore made no attempt to do so. Thus, the Fiscal Court violated the Act when it made no attempt to notify the Appellant of the emergency meeting.²

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. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
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Distributed to:

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² On appeal, the Appellant also claims that the Fiscal Court failed to describe the nature of the emergency that prevented the Fiscal Court from complying with the 24-hour notice requirement for special meetings, and to record such description in the meeting minutes. See KRS 61.823(5). However, the Appellant did not raise this issue in its original complaint to the Fiscal Court. Instead, the Appellant complained only of the Fiscal Court's failure to provide proper notice of the meeting. Under KRS 61.846(2), this Office may only review the complainant's original complaint and the public agency's original response. Accordingly, the Appellant has not preserved this issue for review on appeal.