



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**22-OMD-217**

October 14, 2022

In re: Jeremy Rogers/City of Russellville

**Summary:** The City of Russellville (“the City”) violated the Open Meetings Act (“the Act”) when it entered closed session to discuss a “personnel matter” under KRS 61.810(1)(f) without stating in the open session whether such discussions would lead to the appointment, discipline, or dismissal of the employee. However, the City did not violate the Act when it returned from closed session to discuss in open session a topic not placed on the agenda of the regularly scheduled meeting.

***Open Meetings Decision***

On September 22, 2022, Jeremy Rogers (“the Appellant”) submitted a complaint to the presiding officer of the city council alleging the City violated the Act at its regularly scheduled meeting conducted on September 6, 2022. Specifically, the Appellant complained that the City entered closed session, but its stated reasoning for doing so was “for reason of property, personnel, or litigation.” The Appellant alleged the City gave “no other details” explaining the basis for entering closed session. The Appellant further complained that, although the agenda for the meeting contained an item indicating it would enter closed session to discuss “property, personnel, or litigation,” the next item on the agenda was adjournment. Accordingly, he left the meeting once the City entered closed session because he believed no further topics would be discussed upon the City’s return to open session. However, when the City returned to open session, it voted to approve a bid to repair the roof of a public building. Thus, the Appellant alleged the City must have discussed the bid in closed session without providing appropriate notice.

In a timely response, the City denied it had discussed the bid proposal during closed session. The City claimed its purpose for entering closed session was because

“the Mayor needed to discuss a personnel issue with the Council members,” and thus, closed session discussions were authorized under KRS 61.810(1)(f). The City claimed to have only discussed the “personnel issue,” in closed session, and that all discussions related to the bid to repair the roof were conducted when the City returned to open session. Moreover, the City’s discussion about the bid were recorded in the City’s meeting minutes. This appeal followed.

When a quorum of members of a public agency discusses, or takes action on, public business over which it has jurisdiction, a “meeting” occurs and it shall be open to the public. KRS 61.810; *see also Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 475 (Ky. 1998). Under KRS 61.810(1), a public agency may discuss several enumerated topics in closed session without the public present. Prior to entering closed session to discuss some of these topics, the public agency must give notice in open session “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.” KRS 61.815(1)(a). One such exemption is KRS 61.810(1)(f), which authorizes a public agency to enter closed session to hold discussions “which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student.” However, a public agency must provide proper notice when it is entering closed session to discuss employees under KRS 61.810(1)(f). Because the statute expressly forbids the discussion of “general personnel matters in secret,” *id.*, this Office has found that a public agency must state more than “personnel matters” as the basis for relying upon KRS 61.810(1)(f) to enter closed session. *See, e.g.*, 21-OMD-091 (finding that, prior to entering closed session under KRS 61.810(1)(f), the agency must state at a minimum whether the discussions are likely to lead to appointment, likely to lead to discipline, or likely to lead to dismissal of an employee); 97-OMD-110 (same).

Here, however, the City did not state in open session whether the “personnel issue” to be discussed related to the appointment, discipline, or dismissal of an employee.<sup>1</sup> Moreover, KRS 61.810(1)(f) “shall not be interpreted to permit discussion of general personnel matters in secret.” Thus, the City violated the Act when it failed to state in open session whether its closed-session discussions would lead to the appointment, the discipline, or the dismissal of an employee. *See* 21-OMD-091.

The Appellant’s main complaint is the way in which the City discussed the bid to repair the public building. The Appellant claims this discussion occurred in closed

---

<sup>1</sup> In fact, the City did not specifically state any exemption upon which it was relying, because its stated reason for entering closed session was to discuss “property, personnel, or litigation.” There are multiple exemptions that could potentially relate to discussion of “property.” *See* KRS 61.810(1)(b), (g) and (n). And discussions about proposed or pending litigation are exempt under KRS 61.810(1)(c). Regardless, the City claims to have discussed neither “property” nor “litigation” in closed session, so it is unnecessary to consider these exemptions further.

session. The Appellant left the meeting when the City entered closed session to discuss “property, personnel, and litigation” because the next item on the agenda following closed-session discussions was adjournment. On appeal, the City claims to have not discussed the bid to repair the building in closed session. Instead, when the City reentered open session, the Mayor addressed the bid, and the City discussed it. Moreover, the meeting minutes reflect the discussion of the bid. Although this Office cannot decide the factual dispute of whether discussions of the bid occurred in open or closed session, the fact that such discussions were recorded in the meeting minutes would seem to reflect such discussions occurred in open session. Thus, the Appellant’s complaint hinges on whether the agenda should have reflected the fact that discussions of the bid would occur.

The Act provides for two types of meetings—regular meetings and special meetings.<sup>2</sup> Under KRS 61.820(2), a public agency “shall provide for a schedule of regular meetings by ordinance, order, resolution, bylaws, or by whatever other means may be required for the conduct of business of that public agency.” A meeting that was not previously scheduled under KRS 61.820(2) is a “special meeting,” which has its own notice requirements. KRS 61.823. Notice of a special meeting must be issued no less than 24 hours before the special meeting, and such notice must include a copy of the agenda because “[d]iscussions and action at the meeting shall be limited to items listed on the agenda in the notice.” KRS 61.823(3). However, no such limitation applies to regular meetings. In fact, no agenda at all is required at a regular meeting. And because no agenda is required at a regular meeting, this Office has long held that public agencies are not confined to discuss the matters on the agendas they prepare for regular meetings. 11-OMD-132; 01-OMD-175. Thus, the City did not violate the Act when it discussed in open session a matter not on its agenda.

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](mailto:OAGAppeals@ky.gov).

**Daniel Cameron**  
**Attorney General**

s/ Marc Manley  
Marc Manley  
Assistant Attorney General

---

<sup>2</sup> A subset of “special meetings” include “emergency meetings.” KRS 61.823(5).

#373

Distributed to:

Jeremy Rogers  
Elizabeth Teel