



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

23-OMD-184

July 25, 2023

In re: Alan Halsey/Wolfe County Tourism Commission

Summary: The Wolfe County Tourism Commission (the “Commission”) violated the Open Meetings Act (“the Act”) when it failed to issue a timely response to a complaint. The Commission also violated the Act when it entered closed session to discuss a “personnel matter” without providing adequate notice in open session whether such discussions would lead to the appointment, discipline, or dismissal of the employee.

Open Meetings Decision

On May 11, 2023, Alan Halsey (“Appellant”) submitted a written complaint to the Commission’s presiding officer alleging it had violated the Act at its meeting on May 10, 2023, when it entered closed session to discuss the removal of its current director. On May 11, 2023, the Commission confirmed receipt of the Appellant’s complaint and stated, “it has been forwarded to all commissioners as well as [the Commission’s] attorney.” On July 11, 2023, having received no further response from the Commission, the Appellant initiated this appeal.

Under KRS 61.846(1), a person seeking to enforce the Act must first submit his or her complaint to the presiding officer of the public agency. After receiving a complaint, the public agency “shall determine within three (3) [business] days . . . 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 Appellant submitted a complaint in writing to the Commission’s presiding officer on May 11, 2023. However, the Commission did not notify the Appellant in writing whether it denied the alleged violation or would accept

the Appellant's proposed remedy within three business days of receiving the complaint. Therefore, the Commission violated the Act.

The Commission also violated the Act at the May 10, 2023, meeting. The Appellant states the Commission voted to enter a closed session to "discuss an employee."¹ 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 shall be open to the public. KRS 61.810. Under KRS 61.810(1), a public agency may discuss several topics in closed session without the public present. However, prior to entering closed session to discuss these topics, the public agency must give notice in the 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 exception 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." Because KRS 61.810(1)(f) expressly forbids the discussion of "general personnel matters in secret," this Office has found that a public agency cannot merely state it is discussing "personnel matters" before entering 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. Furthermore, KRS 61.810(1)(f) "shall not be interpreted to permit discussion of general personnel matters in secret." Consequently, the Commission violated the Act when it failed to state in open session whether the closed-session

¹ The Appellant claims the closed session focused on the Commission's director, but the director is actually employed by the Wolfe County Fiscal Court. The Appellant's claim suggests that the Commission could not properly invoke KRS 61.810(1)(f), because the personnel matter it cited for entering closed session did not relate to an employee of the Commission. In contrast, the Commission claims the director is its employee and that its invocation of KRS 61.810(1)(f) at the meeting was proper. As proof, the Commission submits a "job description" and a "newspaper ad" that indicate the director reports directly to the Commission. Nevertheless, under KRS 61.846, this Office is unable to resolve factual disputes in the context of an Open Meetings appeal, such as whether a person is an employee of an agency. *See, e.g.*, 23-OMD-103 (unable to resolve competing factual claims regarding if secret meetings were held to discuss the dismissal of an employee); 08-OMD-040 (unable to resolve a factual dispute as to statements made during a closed session).

discussions would lead to the appointment, discipline, or the dismissal of an employee. *See, e.g.*, 21-OMD-091.

A party aggrieved by this decision may appeal it by initiating an 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 emailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

s/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Alan Halsey
Clifton Gifford, Chairman
Steve O'Connor