



COMMONWEALTH OF KENTUCKY
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23-OMD-266

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In re: *The Sturgis News*/Sturgis City Council

Summary: The Sturgis City Council (“the Council”) violated the Open Meetings Act (“the Act”) when it failed to issue a written response to a complaint within three business days. The Council also violated the Act when it failed to send notice of a special meeting to a media organization that had filed a written request to receive such notices under KRS 61.823(4).

Open Meetings Decision

In a written complaint submitted on September 1, 2023,¹ *The Sturgis News* (“Appellant”), a weekly newspaper, alleged the Council had violated the Act by failing to notify the Appellant of special meetings held on August 28 and 30, 2023. The Appellant is a media organization that has requested notice of special meetings pursuant to KRS 61.823(4). As a remedy for the alleged violations, the Appellant requested “that the Council re-do all actions taken at illegal, closed meetings,” acknowledge the alleged violations, and agree to comply with the Act in the future. Having received no response to the complaint, the Appellant initiated this appeal on September 25, 2023.

¹ On August 30, 2023, the mayor of Sturgis and all members of the Council resigned after appointing a new Council member, who has since been appointed mayor. In an effort to comply with the requirement of KRS 61.846(1) that a complaint be submitted “to the presiding officer of the public agency,” the Appellant submitted the complaint to the newly-appointed Council member, the former mayor, the five former council members who had resigned on August 30, 2023, and the Union County Judge/Executive. The Council does not argue it did not receive the complaint, or that the Appellant failed to comply with KRS 61.846(1). Rather, it argues the Appellant wrote a note on the copy she gave to the newly appointed Council member (who later was appointed mayor on September 11, 2023) stating the complaint was “for [his] records” and “so [he] would be aware.” As such, that individual did not think the Appellant intended for him to issue a response.

The record on appeal does not reflect when the Council received the Appellant's complaint. However, in its response to this appeal, the Council does not deny receiving the complaint, nor does it claim to have responded to it.² 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 Council violated the Act when it failed to respond to the Appellant's complaint within three business days.

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 email when the media organization states a preference to be notified by email. KRS 61.823(4)(b). The Appellant claims it did not receive notice of special meetings held on August 28 and 30, 2023, despite its prior written request to receive such notices.

As evidence to support its allegation that the first special meeting occurred, the Appellant provides a Facebook post from one of the former Council members dated August 28, 2023, describing what had transpired after the mayor announced his resignation at a different public meeting earlier that day. According to the post, "the Council was huddled together after the meeting working on the future" and the five remaining members would "stand together and do [their] best to move forward."³ The member stated the first "orders of business" included a special meeting to be called in the near future.

Under KRS 61.810(1), "[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," with certain enumerated exceptions. Under KRS 61.805(3), "action taken" means "a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body." For purposes of the Act, the discussion of "public business" is "not simply any discussion between two officials of the agency," but "the discussion of the various alternatives to a given issue

² One of the former Council members sent the Appellant a text message on September 6, 2023, which stated the complaint "was not accurate." However, the Council does not claim this message was a sufficient response to the complaint under the Act.

³ The Appellant does not claim any violations of the Act occurred with respect to the earlier meeting on August 28, 2023. Rather, it claims the "huddle" after that meeting adjourned was a special meeting requiring notice.

about which the [agency] has the option to take action.” *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 474 (Ky. 1998).

In its response to this appeal, the Council asserts it is “unclear” whether a quorum was present for the unannounced “huddle” on August 28, 2023. Moreover, merely expressing an intention to “stand together,” “move forward,” or call a meeting at a later date does not constitute “action taken” or discussion of “public business” as those terms were interpreted in *Yeoman*. Discussions about when to schedule a meeting or setting the agenda are not discussions of “public business.” See, e.g., 21-OMD-086 n.1; 20-OMD-072; 13-OMD-086; 00-OMD-171. Nor does a vague, oral commitment to “stand together” or “move forward” after the mayor’s resignation constitute any concrete “action taken” within the meaning of KRS 61.805(3). Thus, the record on appeal does not establish that the Council’s “huddle” on August 28, 2023, constituted a meeting subject to the requirements of KRS 61.810(1).

Regarding the special meeting on August 30, 2023, it is undisputed that a quorum of the Council met at the place of employment of one of the members and took action in the form of appointing a new Council member. Furthermore, the Council does not deny the Appellant’s allegation that no notice of that meeting was given as required under KRS 61.823(4)(a). Thus, the Office finds the Council violated the Act by failing to notify the Appellant of the special meeting on August 30, 2023, and by failing to respond to the Appellant’s complaint.

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
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s/ James M. Herrick
James M. Herrick
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Distributed to:

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