



COMMONWEALTH OF KENTUCKY
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23-OMD-267

October 9, 2023

In re: Melissa Goolman/Estill County Fiscal Court

Summary: The Estill County Fiscal Court (“the Fiscal Court”) did not hold a secret meeting in violation of the Open Meetings Act (“the Act”). Although a quorum of the Fiscal Court was present at the Estill County Road Department’s building, the members of the Fiscal Court did not discuss “public business” or take any action.

Open Meetings Decision

In a written complaint submitted on September 14, 2023, Melissa Goolman (“Appellant”) alleged the Fiscal Court had violated the Act when three of the five magistrates were together on several occasions at the Estill County Road Department (“the Department”) between August 4 and September 14, 2023. She alleged the “meetings were not made public and there were no emergencies in the county during this time frame.” As a remedy, she requested “[a]ny actions taken during these quorums shall be declared null and void, until voted upon publicly, and with a majority vote.”

In a timely response, the Fiscal Court denied any violation of the Act. The Fiscal Court admitted the three magistrates were present at the Department during the dates specified in the complaint, but denied the magistrates discussed “public business” or took any action. Rather, the Fiscal Court claims the magistrates were present to assist the Department while the “Road Foreman” was on approved leave and multiple employees “were off and equipment was down.” The Fiscal Court claimed the only discussions amongst the magistrates and Department employees involved assistance with the maintenance and repair of county vehicles and mowing rights-of-way, topics which do not require Fiscal Court approval. This appeal followed.

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 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 Fiscal Court again states the only discussions that took place at the Department involved the maintenance and repair of vehicles. However, decisions regarding which vehicles to repair, and how, “would fall under the purview of the Road Foreman to authorize without need for Fiscal Court approval.” One magistrate also would discuss which roads required mowing along the rights-of-way, and he would then go out and mow those areas.

Because the topics under discussion involved the various options over which the Road Foreman had the authority to consider, the Fiscal Court did not violate the Act by discussing these topics. This situation is like that in 17-OMD-208, where a city manager discussed with a quorum of the city council his intention to rename the river walk after the outgoing mayor of the city. The city manager also discussed with the city council the cost for plaques naming the river walk after the mayor, which the city manager later purchased. The Office found that these topics involved the alternatives to various options that fell within the authority of the city manager without the need for the city council’s approval. Likewise, here the topics under discussion involved the various options that could be taken by the Road Foreman without the Fiscal Court’s approval (*e.g.*, when and how to repair Department vehicles, and which areas along the county roads needed to be mowed). Thus, the Fiscal Court did not violate the Act when a quorum of its members discussed matters that do not constitute “public business” as interpreted by *Yeoman*. *See, e.g.*, 17-OMD-208.

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/ Marc Manley
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Distributed to:

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