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24-OMD-030

February 6, 2024

In re: Adam Sulfridge/Williamsburg Board of Zoning Adjustment

**Summary:** The Williamsburg Board of Zoning Adjustment (“the Board”) violated the Open Meetings Act (“the Act”) when it failed to issue a written response to a complaint within three business days and when it conducted a meeting under the Act without adequate acoustics. However, the Office cannot resolve the factual dispute concerning whether the Board divided into subgroups to discuss public business in private.

***Open Meetings Decision***

On December 29, 2023, Adam Sulfridge (“Appellant”) submitted a written complaint to the presiding officer of the Board<sup>1</sup> alleging it violated the Act at its December 4, 2023, meeting by discussing public business in secret and by having “inadequate acoustics” when it discussed public business, which the Appellant says “frustrated” the ability of those in attendance “to hear public business being discussed.” Having received no response from the Board by January 25, 2024, 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). On appeal, the Board admits it failed to respond to the Appellant’s complaint. Thus, the Board violated the Act.

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<sup>1</sup> The officer that presided over the meeting resigned shortly thereafter. It is not clear from this record whether the presiding officer resigned before or after the Appellant submitted his complaint. Nevertheless, the Appellant addressed his complaint to the presiding officer of the Board, and therefore, the Board has a duty to timely respond to the complaint.

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[.]” Furthermore, KRS 61.810(2) provides:

Any series of less than quorum meetings, where the members attending one (1) or more of the meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the requirements of subsection (1) of this section, shall be subject to the requirements of subsection (1) of this section. Nothing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues.

Thus, the Act not only prohibits a quorum from taking action in private, but also “prohibits a quorum from discussing public business in private or meeting in number less than a quorum for *the express purpose* of avoiding the open meeting requirement of the Act.” *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 474 (Ky. 1998) (emphasis added). The Supreme Court defined “public business” to include “the discussion of the various alternatives to a given issue about which the board has the option to take action.” *Id.*

Here, the Appellant alleged the Board violated the Act when it “divided into subgroups to conduct sidebar conversations.” On appeal, the Board denies the Appellant’s allegation that it “divided into subgroups” because it claims its members were seated in a “squared U seating the whole time.” In appeals under the Act, the Office cannot resolve factual disputes between the parties. *See, e.g.*, 22-OMD-236; 19-OMD-187; 12-OMD-080. Similarly, here, the Office cannot resolve the dispute between the parties as to whether the Board “divided into subgroups” to discuss public business in private.

However, when a public agency conducts a meeting under the Act, it is required to “provide meeting room conditions, including adequate space, seating, and *acoustics*, which insofar as is feasible allow effective public observation of the public meeting.” KRS 61.840 (emphasis added). Here, the Appellant alleged the Board violated the Act during the meeting because the inadequacy of the acoustics prevented him from hearing conversations between Board members. On appeal, the Board does not directly dispute the Appellant’s allegation. From the record on appeal, it appears members of the Board engaged in conversations that the Appellant could

not hear, and the Board does not deny that its members may have engaged in separate conversations amongst themselves while in full public view at the “U-shaped” table. Thus, while the Office cannot find that the Board intentionally engaged in private conversations “for the purpose of avoiding the requirements of” the Act, KRS 61.810(2), the Board does not deny that some of its conversations may have been inaudible to the public in attendance. As a result, the Board violated the Act when it conducted a meeting under the Act with inadequate acoustics.

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.

**Russell Coleman**  
**Attorney General**

/s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

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