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24-OMD-083

March 22, 2024

In re: Tanyqua Oliver/Louisville Metro Department of Codes and Regulations

Summary: The Louisville Metro Department of Codes and Regulations (“Metro”) violated the Open Meetings Act (“the Act”) when it failed to issue a written response to a complaint within three business days. The Office cannot resolve the factual dispute between the parties as to whether Metro required a member of the public to sign in and identify herself as a condition of attending a meeting or whether the condition was imposed for her to speak at the meeting.

Open Meetings Decision

On March 4, 2024, Tanyqua Oliver (“Appellant”) submitted a written complaint to the presiding officer of the Board’s March 1, 2024, meeting, in which she alleged the Board violated KRS 61.840 when it required her to sign in and identify herself, and prohibited her from speaking at the meeting. Having received no response from the Board, the Appellant initiated this appeal on March 11, 2024.¹

¹ On appeal, the Appellant raises various legal questions and issues unrelated to any alleged violations of the Act, such as her ongoing dispute with her landlord. An open meetings appeal is not the appropriate forum to resolve issues unrelated to alleged violations of the Act. *See* KRS 61.846. The Appellant also raises a new issue on appeal: that Metro violated KRS 61.820(2) when “Case #24-C-001692 was discussed” but “was not listed on the provided schedule of the regular meeting held March 1, 2024.” There are two types of meetings under the Act, regular meetings and special meetings. 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, for which no agenda is required at all. Because public agencies are not required to provide an agenda for regular meetings, the Office has long held that public agencies do not violate the Act if they provide an agenda for a regular meeting but do not limit their discussion to the matters listed on the agenda. *See, e.g.,*

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, Metro admits it did not respond to the Appellant’s complaint concerning the March 1, 2024, meeting. Thus, Metro violated the Act.

Regarding the merits of the Appellant’s allegations against Metro, the Appellant alleges Metro violated the Act when it required her to sign a roster and identify herself to attend the March 1, 2024, meeting. She also claims Metro violated the Act by not allowing her to speak at the meeting.

The purpose of the Act is to ensure the formation of public policy “shall not be conducted in secret.” KRS 61.800. It is for this reason that “[n]o condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency.” KRS 61.840. The Office has previously noted that KRS 61.840 “vests the public with a virtually unconditional right to attend all meetings of a public agency.” 00-OMD-169. However, the Act only provides a right for the public to attend meetings, not a right to speak or participate in the proceedings. *See, e.g.*, 95-OMD-99. Thus, while a public agency shall not require a member of the public to sign a roster or otherwise identify herself simply to attend a meeting, a public agency may impose such conditions before allowing a member of the public to speak at the meeting. *See, e.g.*, 19-OMD-135; 11-OMD-020.

Here, the Appellant claims she was required to sign a roster and identify herself to attend the March 1, 2024, meeting. On appeal, Metro does not dispute that it asked the Appellant to sign a roster and identify herself. However, Metro claims its request was a condition for the Appellant to speak as a witness, not to attend the meeting. Accordingly, there is a factual dispute between the parties about whether the condition was imposed for the Appellant to attend or if it was imposed so she could speak. The Office is unable to resolve factual disputes such as these in this forum. *See, e.g.*, 22-OMD-236; 19-OMD-187; 12-OMD-080. As a result, the Office is unable to find Metro violated the Act by imposing a condition on attendance. Further, because the Act does not guarantee a member of the public the right to speak at a

11-OMD-132; 01-OMD-175. Here, it is undisputed that the March 1, 2024, meeting was a regular meeting.

meeting, the Office cannot find that Metro violated the Act by not allowing the Appellant to speak.

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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