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24-OMD-093

April 3, 2024

In re: Gretchen Stephenson/City of Park Hills

Summary: The City of Park Hills (“the City”) did not violate the Open Meetings Act (“the Act”) when it held a video-conferenced meeting without also providing a physical location for the public to attend. Because the Act does not entitle any member of the public to be heard at a public meeting, the City did not violate the Act by providing a link that only permitted the public to view the meeting but not participate.

Open Meetings Decision

On March 27, 2024, Gretchen Stephenson (“the Appellant”) submitted a complaint to the Mayor of the City, claiming she was not permitted to attend the City’s meeting on March 25, 2024, which was conducted using video-teleconferencing technology. Prior to the meeting, the Appellant asked the Mayor to provide her a URL link to the video-teleconferenced meeting that would allow her to “participate,” not simply to “watch.” To remedy the alleged violation, the Appellant asked the City to admit it violated the Act and to promise her that the City will not bar her or any member of the public from attending future meetings.

In a timely response, the City denied any violation had occurred because the Appellant had been provided a URL link to observe the video-teleconferenced meeting. Further, the City explained it was not required to provide a physical location for the public to observe the meeting because the Mayor and City Clerk were the only individuals present at the “City Building” and the City Clerk is not a member of the City Council. This appeal followed.

The policy embodied in the Act “is that the formation of public policy is public business and shall not be conducted in secret.” KRS 61.800. Accordingly, all discussions of public business by a quorum of a public agency must occur at a meeting that is open to the public, KRS 61.810, and no condition of attendance can be implemented to deny the public’s access to the meeting, KRS 61.840. However, a

public agency can discharge its duty to allow public observance by conducting a meeting using video-teleconferencing technology. *See* KRS 61.826.

Prior to the coronavirus pandemic in 2020, public agencies conducting meetings using video-teleconferencing technology were required to provide a physical location from which the public could watch the video-teleconferenced meeting. However, in 2022, the General Assembly enacted House Bill 453, which amended KRS 61.826 to provide that a public agency *may* conduct a meeting using video-teleconferencing technology *without* providing a primary physical location for the public to attend and watch the meeting, so long as all members of the agency attend virtually from separate physical locations. KRS 61.826(2)(d). But if two or more members attend the meeting from the same physical location, then the public agency must identify a primary physical location from which the public can watch the meeting. *Id.* Regardless of whether a public agency chooses to conduct a video-teleconference meeting with or without a physical location at which the public may attend, the agency must provide “specific information on how any member of the public or media organization may *view* the meeting electronically.”. KRS 61.826(b) (emphasis added). A public agency satisfies this condition by providing the public with a URL link to a website where the meeting is being streamed live.

While a public agency using video-teleconferencing technology must provide a URL link to a website where the public may “view” the meeting, the Act does not require the public agency to allow the public to be heard at the meeting. That is because the Act only provides the public a right to attend a public meeting, not a right to participate in the meeting.¹ *See, e.g.*, 19-OMD-135; 00-OMD-169; 95-OMD-99.

Here, the City exercised its discretion under KRS 61.826(2)(d) to conduct a video-teleconferenced meeting without providing a physical location for the public to watch the meeting. While two public officials may have been present at the City Building, the City Clerk is not a “member” of the city council, and therefore, her presence at the City Building did not divest the City of its discretion to conduct the meeting without providing a physical location. Further, the City provided the Appellant with a URL link to “view” the meeting. Accordingly, the City did not violate the Act at its March 25 meeting.

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.

¹ Although not part of the Act, KRS 160.270(2) requires local boards of education to allow at least 15 minutes of public comment at each regular meeting. No similar statute applies to any other public agency.

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Distributed to:

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