



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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24-OMD-200

September 18, 2024

In re: Tina Burnell/Louisville/Jefferson County Metro Government Ethics
Commission

Summary: The Office of the Attorney General (“the Office”) lacks jurisdiction to consider a complaint alleging that the Louisville/Jefferson County Metro Government Ethics Commission (“the Commission”) violated the Open Meetings Act (“the Act”) because the complaint was not first submitted to the presiding officer of the public agency accused of violating the Act.

Open Meetings Decision

On August 23, 2024, at 7:04 p.m., Tina Burnell (“the Appellant”) submitted a complaint by email to the Commission’s Metro HR Staff Liaison and the Commission’s independent legal counsel.¹ In her complaint, the Appellant claimed the Commission had violated the Act at its July 18, 2024, meeting by using a room with unsatisfactory acoustics and “by requiring attendees to identify themselves in order to attend the meeting.” As a remedy, the Appellant proposed that the Commission use “audio equipment” to enhance audibility and that all members be instructed not to require attendees to identify themselves at public meetings. Having received no response from the Commission by September 3, 2024, the Appellant initiated this appeal.

As an initial matter, the Office must be assured of its jurisdiction before it may render a decision under KRS 61.846(2). A complainant’s request for the Attorney General to review an agency’s denial of a complaint submitted under the Act is a statutory proceeding created by the General Assembly as an act of legislative grace. As such, a complainant must strictly comply with KRS 61.846 before invoking the Attorney General’s jurisdiction to review the complaint. *See, e.g.*, 24-OMD-133; 22-OMD-177.

¹ On appeal, the Commission’s counsel explains that he did not receive the complaint because it was “impounded by [his] law office’s spam filter.”

To invoke the Attorney General's review under KRS 61.846(2), a complainant "shall begin enforcement" under subsection (1) of the statute. KRS 61.846(1). That provision requires the complainant to "submit a written complaint to the presiding officer of the public agency suspected of" violating the Act. *Id.* Accordingly, to begin enforcement, the complaint may not be submitted to just any person at "the public agency suspected" of committing the violation; rather, the complaint must be sent to the agency's "presiding officer." In 22-OMD-177, the Office dismissed a complaint alleging the Jefferson County Public Schools Site Based Decision Making Council had violated the Act because the complainant failed to submit his complaint to the presiding officer of that agency. Rather, he submitted his complaint to the Superintendent of the Jefferson County Public Schools and the school district's general counsel.

Similarly, here, the Appellant submitted her complaint to a staff member and the Commission's private counsel, not to the "presiding officer" of the Commission.² The Appellant's sole explanation for submitting the complaint in this manner is that the Commission's webpage did not list the email address of the presiding officer, but only that of the staff liaison. However, the Act requires neither that open meetings complaints be submitted by email nor that a public agency list the presiding officer's email address on its website. The Appellant could have submitted her complaint to the presiding officer by mail or by hand delivery. Further, the Appellant could have obtained the presiding officer's email address by making an inquiry to the staff liaison. Because the Appellant did not comply with KRS 61.846(1) by submitting a copy of her complaint to the presiding officer of the Commission before initiating this appeal, the Office lacks jurisdiction under KRS 61.846(2) and therefore dismisses this appeal.

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.

² In its response to this appeal, the Commission identifies the presiding officer as Chairperson Delores Pregliasco.

Russell Coleman
Attorney General

/s/ James M. Herrick
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Assistant Attorney General

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Distributed to:

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