



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

25-OMD-057

March 4, 2025

In re: Tanyqua Oliver/Lexington–Fayette Urban County Government
Administrative Hearings Board

Summary: The Lexington-Fayette Urban County Government Administrative Hearings Board (“the Board”) did not violate the Open Meetings Act (“the Act”) by holding a series of less-than-quorum meetings.

Open Meetings Decision

Tanyqua Oliver (“Appellant”) submitted two complaints to the Board’s presiding officer alleging the Board was holding meetings without making its schedule of regular meetings available as required by KRS 61.820, and without making its meeting minutes available as required by KRS 61.835. Specifically, the Appellant alleged the Board’s hearings on appeals of code violations are meetings subject to the requirements of the Act. As a remedy, the Appellant proposed that the Board post its schedule of meetings online and that the Board withdraw every “violation[,] lien[,] and fee placed upon any and [every] property owner that resulted in seizure of property in the entire history of” the Board. In response, the Board explained that “administrative appeals of citations heard by administrative hearing officers of the [Board]” do not “qualify as public meetings” under the Act “because they do not involve a quorum of the Board.”¹ 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.” Under KRS 61.820, “[t]he schedule or regular meetings shall be made available to the

¹ The Board also stated it would, nonetheless, provide public notice of administrative appeal hearings on its website. The Board also advised the Appellant that records of actions taken at, and the videos of, the Board’s hearings are available upon request under the Open Records Act.

public.” And under KRS 61.835, “[t]he minutes of action taken at every meeting of any such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded and such records shall be open to public inspection. . . .”

Here, the Board explains it is a “quasi-judicial body” authorized to “issue remedial orders and impose civil fines as a method of enforcing a local government ordinance when a violation of the ordinance has been classified as a civil offense.” KRS 65.8808(1). To exercise that power, the Board may “assign a hearing officer to conduct a hearing, to determine whether there has been a violation of any local government ordinance that the board has jurisdiction to enforce.” KRS 65.8821(2). “Any member of the code enforcement board, including the chair, may be assigned as a hearing officer.” KRS 65.8829(2)(a). The Board states that “a hearing officer was assigned to preside over code enforcement hearings,” and that the hearing officer did so alone. Accordingly, the Board argues, “a quorum of the members” of the Board did not attend any hearing, and the hearings did not constitute public meetings under the Act.

However, the Appellant asserts that the series of hearings are, instead, a public meeting under KRS 61.810(2). That statute 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 of the members 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). Furthermore, a series of less-than-quorum meetings must be held “for the purpose” of avoiding the obligations of the Act. KRS 61.810(2). In essence, KRS 61.810(2) contains a *mens rea* requirement. See *Elm Street/McCracken Pike Pres. All., Inc. v. Siegelman*, No. 2005-CA-002079, 2007 WL 3228090, at *5 (Ky. App. Nov. 2, 2007).

Here, the Appellant asserts the Board “rotates” its members as hearing officers “to avoid the requirements of” the Act. But that allegation, standing alone, does not establish that the Board assigns its members as hearing officers to avoid the requirements of the Act. Moreover, the Board is expressly authorized by statute to assign its members as hearing officers to conduct these hearings individually, and not as a group. *See* KRS 65.8829(2)(a).

To the extent there is a conflict between KRS 65.8829(2)(a), which applies to code enforcement boards, and KRS 61.810(2), which generally applies to all public agencies, the Office turns to the canons of statutory construction. “In harmonizing the conflict between two statutes that relate to the same subject, Kentucky follows the rule of statutory construction that the more specific statute controls over the more general statute.” *Light v. City of Louisville*, 248, S.W.3d 559, 563 (Ky. 2008). Here, KRS 65.8829(2)(a)—the more specific statute—specifically grants authority to code enforcement boards to assign a single member to act as the hearing officer in an administrative case. It therefore controls over KRS 61.810(2)—the more general statute—which generally prohibits less-than-quorum meetings by any public agency. Thus, an agency does not violate KRS 61.810(2) when it acts pursuant to its express statutory authority to act in numbers less than a quorum. Accordingly, the Board did not violate the Act by conducting a series of less-than-quorum meetings.

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Tanyqua Oliver

Michael Cravens, Managing Attorney, Department of Law, Lexington-Fayette
Urban County Government

Evan P. Thompson, Attorney, Lexington-Fayette Urban County Government