



COMMONWEALTH OF KENTUCKY
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25-OMD-110

April 30, 2025

In re: Jason O'Bannon/London City Council

Summary: In appeals to the Office under the Open Meetings Act ("the Act"), the Office cannot resolve factual disputes or determine the credibility of witnesses. Accordingly, the Office cannot find that the London City Council ("the Council") violated KRS 61.810(2) by holding a series of less-than-quorum meetings.

Open Meetings Decision

Jason O'Bannon ("the Appellant") submitted a complaint to the presiding officer of the Council alleging it had violated the Act by holding a series of less-than-quorum meetings regarding who would fill a vacancy on the Council. Specifically, the Appellant alleged that three of the Council's remaining five members met in secret before its special meetings on January 29 and 31, 2025, to discuss a particular individual's candidacy. In a timely response, the Council denied that the three members discussed the subject outside of those two public meetings. 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," except in certain situations not relevant here. Moreover, under KRS 61.810(2), "[a]ny 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 [KRS 61.810(1)], shall be subject to" KRS 61.810(1). In other words, a public agency may not intentionally avoid the Act's requirement to discuss or take action on public business in a meeting open to the public by holding smaller meetings that, when those

in attendance are combined, would result in a quorum of the members having discussed or taken action on such public business.

Before proceeding to the merits of the Appellant's complaint, the Office must first address its limitations. While the Attorney General recognizes his duty to review complaints and agencies' responses thereto to determine whether a violation of the Act has occurred, KRS 61.846(2), the Office cannot resolve competing factual claims about events that may or may not have transpired. *See, e.g.*, 00-OMD-169. The Act does not permit the Office to issue subpoenas, take testimony, or judge the credibility of witnesses. Nor could it, even if authorized to do so, in the short time frame allowed this Office to render a decision. *See* KRS 61.846(2) (requiring the Attorney General to issue a decision within ten business days). Disputes that turn heavily on competing evidence are better suited for review in circuit court. *See* KRS 61.848; *see also* 23-OMD-103 (finding the Office could not resolve a factual dispute regarding alleged violations of KRS 61.810(2)). This is one such case.

Here, the Appellant has not provided evidence to support his claim that three Council members violated KRS 61.810(2) by discussing who would fill a vacancy on the Council. Instead, he describes the events of the meetings on January 29 and 31, 2025, concluding that the three Council members must have met prior to those meetings. According to the Appellant, the three Council members prepared a Facebook post on January 24, 2025, which described the vacancy, stated the requirements for qualification, and invited applicants to appear at the upcoming January 29 meeting. Two individuals appeared at the January 29 meeting to state their interest in the vacant seat. Subsequently, at the January 31 meeting, the Council selected an individual to fill the vacancy who had not appeared at the January 29 meeting¹ or otherwise publicly communicated his desire and willingness to join the Council. Thus, according to the Appellant, the three Council members must have met prior to the January 29 and 31 meetings to confirm that the new Council member would accept his nomination.²

For its part, the Council maintains its position that "the allegations are unfounded and false." Moreover, the Council has provided the affidavits of the three Council members, who swear they did not engage in the alleged conversations.

¹ KRS 83A.040(5) requires the remaining members of a city legislative body to fill the vacancy within 30 days.

² The Appellant also alleges the existence of an audio recording, created between the January 29 and 31 meetings, in which a Council member told a candidate for the vacant Council seat he should not seek the seat because the three Council members had already selected a new member. The alleged audio recording was not provided to the Office.

Specifically, the Council members deny ever meeting in person or over the phone to discuss the appointment of a new member, either individually or as a quorum of Council members. Moreover, the Council explains that the Facebook post was created by a single Council member to ensure that individuals interested in the vacant seat knew to appear at the January 29 meeting.

Thus, the record here contains the Appellant's circumstantial allegation that the secret meetings must have occurred, the description of an alleged audio recording, and affidavits in support of the Council, in which the affiants swear no such secret meetings occurred. "The mere stated belief that secret meetings occurred is not evidence that they did occur, especially not when rebutted by the [Council] members, who swear such meetings did not occur." 23-OMD-103; *see also* 18-OMD-060 (mere speculation that secret meetings must have occurred is insufficient). The Appellant's argument, at best, presents a factual dispute regarding the credibility of the Council members' affidavits. At bottom, the Appellant speculates that the three Council members must have met in secret, while the three Council members swear that they did not. Accordingly, this Office cannot find the Council conducted a series of less-than-quorum meetings in violation of the Act.

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
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Distributed to:

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