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25-OMD-197

July 25, 2025

In re: Kelly Bush/Franklin City Commission

Summary: The Franklin City Commission (“the Commission”) did not violate the Open Meetings Act (“the Act”) by discussing topics not authorized by KRS 61.810(1)(f) in closed session. The Commission gave adequate notice of the discussions and actions to be discussed or taken at its May 16, 2025, special meeting.

Open Meetings Decision

Kelly Bush¹ (“Appellant”) submitted a complaint alleging the Commission violated the Act at its May 16, 2025, special meeting. At that meeting, the Commission held a closed session under KRS 61.810(1)(f), which authorizes an agency to enter into closed session to facilitate “[d]iscussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee.” The Appellant alleges the Commission held discussions and took final action, in closed session, about a proposed “restructuring” of the City’s Planning and Zoning Commission. The Appellant also alleged the Commission’s agenda did not provide notice of the business to be conducted, violating KRS 61.823(3). In a timely response, the Commission denied violating the Act and explained that the only discussion in closed session was regarding whether to retain a particular category of employee, and that no discussion of the proposed “restructuring” of the City’s Planning and Zoning Commission took place in closed session.² This appeal followed.

Under KRS 61.810(1)(f), a public agency may enter closed session to hold discussions that “might lead to the appointment, discipline, or dismissal of an

¹ The Appellant is a Franklin City Commissioner.

² The Commission also pointed out that the Appellant was absent from the Commission’s May 16 special meeting.

individual employee, member, or student.” The Commission’s May 16 agenda stated it would enter closed session to hold “[d]iscussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee or member” and cited KRS 61.810(1)(f). On appeal, the Commission further explains that it held discussions regarding whether it would dismiss a particular class of city employee. Such discussions clearly could lead to the dismissal of individual employees, and as such, those discussions did not violate of the Act.

On appeal, the Appellant argues that additional discussions must have occurred in closed session, and it is those additional discussions that violated of the Act. As evidence, the Appellant points to an email from the City Attorney to the City Commissioners, which outlined the proposal, included documents relevant to the May 16 meeting, and briefly discussed the proposal that was discussed in open session.

For its part, the Commission explains, first, that its closed session was limited to discussions that might lead to the dismissal of individual employees. The Commission also pointed out that the Appellant did not attend its May 16 meeting and has no firsthand knowledge of what occurred. It further states that there was discussion of the proposal in open session, and the length of that discussion is not evidence of what occurred in closed session.³ The Commission also provided affidavits of each Commissioner in attendance at the May 16 meeting, which all stated that the Commission did not discuss the proposal in closed session or at any other point prior to the open session at the May 16 meeting.⁴

Ultimately, the parties dispute the content of the discussion that occurred in the Commission’s May 16 closed session. It is true that the Office has consistently recognized its inability to resolve competing factual claims about events that may or may not have transpired. *See, e.g.,* 25-OMD-110; 23-OMD-103; 00-OMD-169. But

³ The Commission also explained that the circumstances necessitating the proposal “have been discussed at eight” or more meeting of the Commission.

⁴ The Appellant also alleges that the city attorney’s pre-meeting email constituted a discussion of the proposal outside of an open meeting. 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. However, the Office has expressed doubt that written communications among a quorum of an agency are subject to the Act. *See, e.g.,* 23-OMD-103 n.1; 23-OMD-112 n.3. It is not necessary to address this issue because the single email provided by the Appellant did not constitute a “discussion” or final action of the Commission. Rather, the email—which was not sent by a Commission member—simply provided Commission members with the materials to be discussed at the upcoming meeting. No discussion about those materials, or consideration of whether to accept or reject the proposal, was had. Therefore, no violation of KRS 61.810(1) occurred.

here, the Appellant baldly asserts that a discussion not authorized by KRS 61.810(1)(f) must have occurred in the Commission's closed session. The Commission, through the sworn affidavits of every Commissioner in attendance at the meeting, has provided evidence that no such discussions occurred. An unsupported allegation that public business must have been conducted or discussed, standing alone, is not evidence that such action or discussions did in fact occur, especially when denied under oath by every member of the public agency that participated in the closed session. *See* 23-OMD-103. Accordingly, the Office cannot find that the City violated the Act by discussion matters in closed session not authorized by KRS 61.810(1)(f).

Finally, the Appellant also alleges the Commission's agenda did not give adequate notice of the business to be conducted at the May 16 meeting. KRS 61.823(3) requires that "[t]he public agency shall provide written notice of the special meeting. The notice shall consist of the date, time, and place of the special meeting and the agenda. Discussions and action at the meeting shall be limited to items listed on the agenda in the notice." The Office has interpreted this statute to require that a special meeting agenda "give fair notice of the particular topics to be discussed or acted upon." 19-OMD-160. Here, the challenged portion of the Commission's agenda stated, "Discussion and/or possible action by the City Commission and City Staff regarding Planning & Zoning Commission Proposal." The record on appeal shows that the Commission discussed a proposal related to the Planning & Zoning Commission and voted on a motion to adopt the proposal. The Appellant argues that this description does not explain "the significant intergovernmental and financial changes being proposed." But a description of the believed magnitude of the proposed discussion or action is not required by the Act. Here, the Commission's agenda gave adequate notice of the discussions and actions taken at its May 16 meeting. According, the Commission did not violate KRS 61.823(3).

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:

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