



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-OMD-414

December 18, 2025

In re: Kelly Bush/Franklin City Commission

**Summary:** The Franklin City Commission (“the Commission”) did not violate the Open Meetings Act (“the Act”) when it discussed a specific proposal from a business entity in closed session under KRS 61.810(1)(g). The Commission was not required to state the reason for the closed session in detail because KRS 61.815(2) exempts discussions under KRS 61.810(1)(g) from the requirements of KRS 61.815(1). In view of the disputed facts, the Commission cannot be found to have discussed or formulated proposed legislation in closed session.

### ***Open Meetings Decision***

In a written complaint submitted under KRS 61.846(1), Franklin City Commissioner Kelly Bush (“the Appellant”) alleged that the Commission had violated the Act at its regular meeting on August 25, 2025, when it held a closed session to discuss “proposed text amendments to the Planning and Zoning . . . regulations for the I-2 Heavy Industrial Zoning District” that “would expand permitted uses to explicitly include . . . Advanced Technology Centers [and] Integrated Energy Systems.” The Appellant claimed the Commission’s “discussion involved substantive public policy changes” and “[n]o valid statutory exception under KRS 61.810(1) justified the closure” of the meeting. Further, the Appellant alleged the Commission “immediately conducted a first reading of the amendments” upon returning to open session, because “deliberation and consensus [had] occurred privately.” In addition, the Appellant claimed the Commission failed to follow the procedural requirements for entering a closed session. As remedies for the proposed violations, the Appellant proposed that the Commission acknowledge the violations, mandate training, void the first reading of the amendments, and issue a press release.

In a timely response to the complaint, the Commission denied violating the Act and claimed it had followed proper procedure by announcing the closed session under KRS 61.810(1)(f) and (g).<sup>1</sup> Additionally, the Commission stated that the Executive Director of Economic Development for the Franklin-Simpson Industrial Authority (“the Director”) attended the closed session “to discuss a new business” and informed the Commission that “the topics he was about to discuss would jeopardize the siting, retention, expansion or upgrading of a business.” According to the Commission, the Director

explained that he was there on behalf of a new company that proposed to locate a technology center in the city of Franklin. [The Director] also explained the business, the potential for employment, and the fact that they would need to create a power facility on site to operate the technology center. There were questions from [the] Commissioners as to the impact [on] infrastructure and other issues. [The Director] then explained the need for the text amendments to the City’s Planning and Zoning Regulations as there is no current zoning allowing for a technology center, data center, and integrated energy systems. He further stated that the business needed the text amendment in order to continue their due diligence to potentially locate in the city.

The Commission further explained that “[i]t was clear that, without the text amendments, the company would not consider the city of Franklin as a viable location any further. Therefore, all of these discussions and the lack of Commission action on the text amendments would definitely jeopardize the siting of this new industry in Franklin.” The Commission emphasized that “the business clearly wanted to keep information regarding their business private prior to discussions, which is why they asked [the Director] to appear on their behalf.” 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,” subject to certain exceptions. Among these exceptions is KRS 61.810(1)(g), which exempts “[d]iscussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business.”

The Appellant claims a public agency’s “discussions concerning a specific proposal” from a business entity are not exempt under KRS 61.810(1)(g) unless they are “discussions between a public agency and a representative of a business entity,” and asserts the Director, as “a public official,” was not a proper representative of the

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<sup>1</sup> The issues relating to KRS 61.810(1)(f) are not at issue in this appeal.

business entity. It is well established, however, that KRS 61.810(1)(g) may apply to a public agency's discussions of a specific proposal from a business entity, "with or without the representative" present, as long as the stated conditions apply. 05-OMD-148; *see also* 23-ORD-078; 16-OMD-129; 03-OMD-089; 99-OMD-104; 94-OMD-119.

The Appellant further claims no specific proposal from a business entity was discussed in the closed session. The Commission, however, states there was such a specific proposal, and it describes that proposal in considerable detail. Ultimately, the Office cannot resolve a factual dispute of this nature in this appeal under the Act. *See, e.g.*, 24-OMD-083. Further, the Commission asserts the business entity did not wish to disclose its identity in public, so as not to jeopardize the siting of the proposed technology center. The Appellant, for his part, has presented no evidence that the nature of the entity's proposal is public knowledge. *See, e.g.*, 16-OMD-129; 94-OMD-119 (finding KRS 61.810(1)(g) inapplicable when the business proposal was publicly known). Although the extent to which open discussions of the proposal would have actually jeopardized the siting of the business is not clear, the Office cannot find a violation of the Act "[w]hen the record is inconclusive" on that issue. 23-OMD-078; *see also* 17-OMD-044. Accordingly, the Commission has presented sufficient evidence that KRS 61.810(1)(g) authorized its closed session to discuss a specific proposal from a business entity.

Although the closed session was authorized for that specific purpose, the Appellant also claims the Commission violated the procedural conditions for announcing a closed session. Under KRS 61.815(1)(a), "[n]otice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session." However, even assuming the Commission did not comply with that provision, such noncompliance would not have violated the Act. Under KRS 61.815(2), "[p]ublic agencies and activities of public agencies identified in paragraphs (a), (c), (d), (e), (f), but only so far as (f) relates to students, (g), (h), (i), (j), (k), (l), and (m) of subsection (1) of KRS 61.810 shall be excluded from the requirements of" KRS 61.815(1). Here, the Commission's contested action in closed session occurred pursuant to KRS 61.810(1)(g), which is one of the exemptions cited in KRS 61.815(2). In *Cunningham v. Whalen*, 373 S.W.3d 438, 441 n.12 (Ky. 2013), the Supreme Court of Kentucky stated that an exemption listed in KRS 61.815(2) relieves a public agency "from the requirements of announcement of a closed session and a public vote on holding a closed session, as well as the requirement that no final action be taken." *See also* 22-OMD-057. In light of these authorities, the Office cannot find that the Commission violated the Act by failing to comply with KRS 61.815(1)(a).

The Appellant's principal argument, however, is that the Commission exceeded the limits of KRS 61.810(1)(g) by discussing in closed session a proposed legislative change, which directly pertains not to a specific business proposal, but to

a public rule of general application. Under KRS 61.800, all exceptions to the Act “shall be strictly construed.” Here, the Appellant alleges the Commission was not only presented with proposed amendments the business entity wished to see adopted, but “reviewed and *shaped* those amendments in closed session” (emphasis added). The “basic policy of [the Act] is that the formation of public policy is public business and shall not be conducted in secret.” KRS 61.800. Thus, the discussion “of potential amendments to [local legislation] is the epitome of activity intended by the legislature” to be conducted in public. 12-OMD-118; *see also* 08-OMD-153 (finding the adoption of an ordinance was not a proper subject for discussion in a closed session).

The Commission, however, denies this allegation, stating, “At no time during the discussions in closed session were any suggested changes made to the text amendments or any of the wording. They were simply presented ‘as-is’ from the company’s attorney for consideration by the Planning and Zoning Commission and City Commission.” Therefore, the Commission asserts “there were no text amendments or public policy formed or drafted in closed session.” The Commission also provides an affidavit from the Director stating, in part, that “there were no specific discussions or negotiations as to the contents of the text amendments as presented” and he does not “recall being asked to propose any changes to the language in the text amendments back to the company in either closed or open session.” The Director affirms that “[m]ost, if not almost all, of the discussion revolved around what the company was going to do, potential power and utility usage, and employment.” In view of this factual dispute, the Office cannot find that the Commission exceeded the scope of KRS 61.810(1)(g) by discussing or formulating proposed legislation in closed session. Accordingly, the Commission did not violate the Act.<sup>2</sup>

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](mailto:OAGAppeals@ky.gov).

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<sup>2</sup> The Commission argues that this appeal “could be dismissed as moot” because the Franklin Planning and Zoning Commission recommended against adopting the amendments and the Commission accepted that recommendation. Although 40 KAR 1:030 § 6 provides circumstances in which an open records appeal may be rendered moot, there is no similar provision regarding mootness of an open meetings appeal. The Office has found open meetings appeals moot only when “a public agency concedes the open meetings error alleged,” 17-OMD-256 (quoting 06-OMD-008), and agrees “to implement corrective measures,” 07-OMD-022.

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Distributed to:

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