



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-207

July 31, 2025

In re: Kelly Bush/Franklin City Commission

Summary: The Franklin City Commission (“the Commission”) violated the Open Meetings Act (“the Act”) when it conducted a closed session to discuss matters of public business for which KRS 61.810(1) does not authorize closed discussions. Although KRS 61.810(1)(c) authorizes closed discussion of proposed litigation, such discussion was improper at a special meeting when it was not listed on the agenda. KRS 61.846(2) does not authorize the Attorney General to grant relief beyond issuing a decision stating whether a public agency violated the Act.

Open Meetings Decision

On June 6, 2025, in a written complaint submitted under KRS 61.846(1), Franklin City Commissioner Kelly Bush (“the Appellant”) alleged the Commission had violated the Act at its special meeting on June 2, 2025. Specifically, he claimed the Commission improperly discussed the “ratification of changes and signatures for German American Bank accounts” during a closed session when no such closed discussion was authorized by KRS 61.810(1). He further noted that the agenda for the special meeting only cited KRS 61.810(1)(g) and identified the subject matter of the closed session as “Business.”¹ The Appellant further alleged that “once in executive session, the City Manager stated the session was being held due to litigation,” which was not a subject appearing on the agenda. As a remedy for the alleged violations, the Appellant requested the Commission acknowledge the violation, publicly disclose what occurred in the closed session, issue a press release “detailing the violation and corrective actions,” and commit to abiding by the Act in the future.

¹ The agenda clarified the nature of that “business” by incorporating a memorandum from the City Finance Director, which noted that “fraudulent activity” had recently been discovered and proposed that the Commission “ratify” some of the Finance Director’s actions, including closing and opening bank accounts and specifying certain individuals as check signers.

In a timely response to the complaint, the Commission admitted that “‘Litigation’ was inadvertently omitted from the agenda” and agreed to issue a press release. The Appellant replied on June 10, 2025, that he believed “litigation” was also an improper basis for the closed session because there was “no pending litigation [and] no legal counsel present.” In a response to this communication on June 11, 2025, the city attorney asserted that the Commission had discussed the option of pursuing criminal charges against the perpetrator of the fraud, which would constitute proposed litigation on behalf of the City of Franklin.² This appeal followed.

The basic policy of the Act is that “[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,” unless an exception is provided by law. KRS 61.810(1). Under KRS 61.810(1)(c), a public agency may enter closed session to hold “[d]iscussions of proposed or pending litigation against or on behalf of the public agency.” This subsection applies “to matters commonly inherent to litigation, such as such as preparation, strategy, or tactics.” *Floyd Cnty. Bd. of Ed. v. Ratliff*, 955 S.W.2d 921, 924 (Ky. 1997). Proposed or pending litigation may be either civil or criminal in nature. *See, e.g.*, 01-OMD-41. Here, therefore, the Commission’s discussion of proposed criminal litigation was within the scope of KRS 61.810(1)(c). However, “the exceptions provided for by KRS 61.810 or otherwise provided by law shall be strictly construed.” KRS 61.800. Therefore, “the matters discussed under KRS 61.810(1)(c) must not be expanded to include general discussions of ‘everything tangential to the topic.’” *Floyd Cnty. Bd. of Ed.*, 955 S.W.2d at 924 (quoting *Jefferson Cnty. Bd. of Ed. v. Courier-Journal*, 551 S.W.2d 25, 28 (Ky. App. 1977)). Therefore, the Commission violated the Act when it conducted general discussions in closed session on topics not directly related to litigation, such as opening or closing bank accounts, authorizing individuals to sign checks, and ratifying certain actions of the Finance Director.

The question remains whether the Commission properly discussed proposed litigation in closed session in this instance. The Commission’s meeting on June 2, 2025, was a special meeting. Under KRS 61.823(3), a public agency must provide written notice of a special meeting, and that notice must include the meeting agenda. “Discussions and action at the meeting shall be limited to items listed on the agenda in the notice.” *Id.* Here, the agenda listed a closed session, but only to discuss “Business” pursuant to KRS 61.810(1)(g), an exception that authorizes closed

² The Commission argues that the Appellant, by submitting copies of the June 10 and 11 correspondence with his appeal, is attempting to “file multiple or subsequent grievances about the same topic and meeting” and that KRS 61.846 does not permit him to do so. It is unnecessary to address this issue, because the Office believes the Appellant’s original complaint on June 6, 2025, contains all the allegations relevant to this appeal. The Office considers the June 10 and 11 correspondence only as background information to explain the Commission’s basis for invoking KRS 61.810(1)(c).

“[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 Commission does not claim it held discussions relating to the siting, retention, expansion, or upgrading of a business. Furthermore, no discussion relating to proposed litigation was listed on the agenda. Thus, the discussion of proposed litigation in closed session was unauthorized under KRS 61.823(3). Accordingly, the Commission’s entire discussion in closed session violated the Act.³

The Appellant requests that the Office grant other relief beyond finding that the Commission violated the Act. Specifically, he asks the Office to require the Commission to grant remedies, including issuing a press release with specific content and adopting certain internal policies, and to “[r]ecognize” the Commission’s violation “as part of a pattern.” Under KRS 61.846(2), however, the Attorney General’s jurisdiction is limited to issuing “a written decision which states whether the agency violated the provisions of” the Act. *See, e.g.*, 24-OMD-232 n.3; 07-OMD-196; 98-OMD-74. Any further relief is beyond the scope of this appeal.

A party aggrieved by this decision may appeal it by initiating 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 e-mailed to OAGAppeals@ky.gov.

Russell Coleman
Attorney General

/s/ James M. Herrick
James M. Herrick
Assistant Attorney General

³ The Appellant further claims the Commission violated KRS 61.815(1) by conducting discussions in closed sessions that were “not disclosed in open session.” However, that allegation was not presented in the Appellant’s complaint and is therefore outside the scope of this appeal. *See* KRS 61.846(1) (requiring submission of a written complaint “stat[ing] the circumstances which constitute an alleged violation of” the Act before seeking enforcement with the Attorney General).

#338

Distributed to:

Mr. Kelly Bush

W. Scott Crabtree, Esq.

Hon. Larry Dixon