

19-OMD-231

December 23, 2019

In re: Michael Murphy/Gallatin County Planning Commission

Summary: Gallatin County Planning Commission violated Open Meetings Act by failing to include agenda in notice of special meeting, failing to post notice in conspicuous location, and failing to respond to an open meetings complaint.

Open Meetings Decision

The question presented in this appeal is whether the Gallatin County Planning Commission (“Commission”) violated the Open Meetings Act (“the Act”) prior to a special meeting scheduled for November 4, 2019, by failing to post proper notice or issue a meeting agenda as required by KRS 61.823. For the reasons that follow, this Office finds that the Commission violated KRS 61.823 and, additionally, failed to respond to an open meetings complaint pursuant to KRS 61.846(1).

On November 7, 2019, Michael Murphy submitted a written complaint to the administrator and vice chairman of the Commission, alleging that the Commission had failed to comply with KRS 61.823(3) by including the agenda in the notice of special meeting, and further failed to post written notice in a conspicuous place pursuant to KRS 61.823(4)(c). In addition, he stated that the Commission “may have violated” KRS 61.823(2) because “it’s unknown who called for this special meeting.” As a remedy for the alleged violations, he proposed that the Commission void all actions taken at the special meetings and comply with the Act in the future.

Mr. Murphy mailed both copies of his complaint to the postal address shown on the Commission's webpage.¹ On November 20, 2019, both letters were returned to Mr. Murphy marked "not deliverable as addressed, unable to forward."² Therefore, on November 21, 2019, he sent both copies of the complaint by certified mail to Commission attorney Brian Newman. On November 25, 2019, Sally Haddix signed for the delivery on behalf of Mr. Newman. Having received no response to his complaint by December 6, 2019, Mr. Murphy initiated this appeal.

Submission of complaint and failure to respond

KRS 61.846(1) requires a person seeking administrative enforcement of the Act to "submit a written complaint to the presiding officer of the public agency." Since the Commission has confirmed that the address used, Box 144, 200 Washington Street, Warsaw, Kentucky, was the correct address, this Office concludes that Mr. Murphy submitted his complaint in compliance with KRS 61.846(1) by using this address for Vice Chairman Arthur Hawkins.³

In a response to the appeal on behalf of the Commission, Mr. Newman stated: "I don't know if the inclusion of the street address caused some confusion, but there certainly is no intent to hide any kind of wrongdoing or bad acts. The Planning and Zoning Board has no way of affecting the mail delivery in Warsaw." Evidently, then, the failure of delivery was a postal error, as opposed to a refusal to accept delivery by the Commission.

Following his attempted transmission of the complaint to the presiding officer, Mr. Murphy effected actual transmission of the complaint to the Commission's counsel on November 25, 2019. Given the failure of mail delivery on the first attempt, this Office finds that this subsequent receipt by agency counsel was sufficient to trigger the Commission's duty to respond. "To hold otherwise would be tantamount to encouraging our government officers to 'bury

¹ <http://gallatinfiscalcourt.com/planning-and-zoning/> (last visited Dec. 13, 2019).

² These labels were dated November 18, 2019.

³ According to the minutes of the November 4, 2019, meeting, which Mr. Murphy submitted with his appeal, Vice Chairman Hawkins was the presiding officer at that meeting.

their heads in the sand' to public matters with which they are charged." *Baker v. Jones*, 199 S.W.3d 749, 752 (Ky. App. 2006).

With regard to the duty to respond to an open meetings complaint, KRS 61.846(1) provides:

The public agency shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision.

By failing to respond to the complaint within the three-day period, the Commission violated the Open Meetings Act. 16-OMD-007.

Failure to comply with KRS 61.823

KRS 61.820 requires a public agency to "provide for a schedule of regular meetings" and make that schedule available to the public. The Commission's webpage, in compliance with this provision, gives the time and location of its regular meetings and states that they are held on the first Tuesday of each month.

In this case, the Commission changed its meeting date to Monday, November 4, 2019. Rescheduling a regular meeting transforms it into a special meeting subject to the requirements of KRS 61.823. 14-OMD-009. KRS 61.823(3) provides:

The 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.

(Emphasis added.) Mr. Murphy included with his appeal a copy of a notice published in the *Gallatin County News*, which gives the date, time, and place of the Commission's meeting, but no agenda.

On appeal, the Commission admitted that the written notice transmitted to media organizations⁴ did not include the meeting agenda as required by law. Therefore, this Office finds that the Commission violated KRS 61.823(3).

Mr. Murphy additionally alleged in his complaint that the Commission violated KRS 61.823(4)(c), which provides:

As soon as possible, written notice shall also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building which houses the headquarters of the agency. The notice shall be calculated so that it shall be posted at least twenty-four (24) hours before the special meeting.

Mr. Murphy provided photographs taken of the door, windows, and bulletin board in the building when he arrived to attend the meeting. No notices were visible in the photographs. On appeal, the Commission admitted that posting of the written notice in a conspicuous place at the meeting site was required, but did not occur. Therefore, this Office concludes that the Commission violated KRS 61.823(4)(c).

Finally, Mr. Murphy alleged that that the Commission “may have violated” KRS 61.823(2), which provides: “The presiding officer or a majority of the members of the public agency may call a special meeting.” His argument on this point consists solely of his own admission that he does not know whether the special meeting was called pursuant to proper authority. Based on nothing more, this Office is unable to conclude that the special meeting was called without statutory authorization. Thus, this Office finds no basis for a violation of KRS 61.823(2).

Conclusion

This Office finds that the Commission violated the Open Meetings Act by failing to respond to an open meetings complaint pursuant to KRS 61.846(1), to include the meeting agenda in its written notice of special meeting pursuant to

⁴ KRS 61.823(4)(a) requires written notice to be transmitted to “each media organization which has filed a written request ... to receive notice of special meetings.”

KRS 61.823(3), and to post a written notice in a conspicuous location pursuant to KRS 61.823(4)(c). This Office finds no violation of KRS 61.823(2).

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 should be notified of any action in circuit court, pursuant to KRS 61.846(5), but should not be named as a party in that action or in any subsequent proceedings.

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#469

Distributed to:

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