



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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20-OMD-126

August 17, 2020

In re: David A. Guidugli/Cold Spring City Council

Summary: The Cold Spring City Council (“City Council”) complied with all of the notice requirements for special meetings under KRS 61.823 prior to holding its April 27, 2020, meeting and therefore the City Council did not violate the Open Meetings Act (“the Act”).

Open Meetings Decision

On May 30, 2020, David A. Guidugli (“Appellant”) submitted a written complaint under KRS 61.846(2) to the Cold Spring Mayor “requesting proof” that the City Council provided the statutorily required notice of its April 27, 2020, special meeting. Appellant also requested clarification as to whether the special meeting was legal when the Mayor had previously enacted an executive order declaring that there would be no City Council meetings prior to April 30, 2020.¹

¹ Appellant further claimed that the City Council did not follow the appropriate procedure in enacting a city ordinance at the meeting. The City Council disagreed and claimed that it lawfully enacted the ordinance. However, this Office declines to address this dispute because this Office is only authorized to determine whether the City Council complied with the Act. *See* KRS 61.826(2); *see also* 95-OMD-99 (finding that this Office “cannot decide whether other statutes and various local procedures and regulations have been violated”); 02-OMD-22 (declining to make a finding as to whether a university’s board of regents complied with its own bylaws); 10-OMD-120 (holding that complainant failed to state a claim that was justiciable under the Act because the Attorney General lacked authority to enforce Code Enforcement Board Orders).

In response to his complaint, the City Council provided Appellant with a copy of an e-mail sent by the City Clerk to media organizations that had requested such notice under KRS 61.823(4)(b). The email reveals that the City Clerk sent the e-mail more than 24 hours in advance of the meeting. In addition, the City Council stated that it posted the required notice “on the door,” presumably the front door of the headquarters for the City Council.² For the following reasons, this Office finds that the City Council did not violate the Act.

In response to the public health emergency caused by the novel coronavirus, the General Assembly passed Senate Bill 150 (“SB 150”). Containing an emergency clause, SB 150 became law upon the Governor’s signature on March 30, 2020. For the duration of the state of emergency, the General Assembly has given public agencies certain flexibility in how they may conduct a public meeting – whether in-person or by video or audio teleconference. 2020 Ky. Acts ch. 73 § 1(8)(b) (“Notwithstanding KRS 61.826, a public agency may conduct any meeting, including its regular meeting, by live audio or live video teleconference during the period of the state of emergency.”). To conduct a meeting under SB 150, the public agency must “[p]rovide public notice, under subsections (3) to (5) of KRS 61.823, that the meeting is being conducted under this paragraph by live audio or video teleconference[.]” *Id.* In addition to the notice requirements provided in KRS 61.823, the public agency must also “[p]rovide specific information on how any member of the public or media organization can access the meeting.” *Id.*

Under SB 150 and KRS 61.823(3), a public agency must “provide written notice of the special meeting. The notice shall consist of the date, time, and place of the special meeting and the agenda.” Moreover, under KRS 61.823(4)(a) the public agency must transmit a copy of the notice and agenda “to every member of the public agency as well as each media organization which has filed a written request . . . to receive notice of special meetings. The notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting.” A public agency may satisfy this requirement by delivering the notice and agenda via e-mail to those who have previously requested e-mail transmission of the notice. KRS 61.823(4)(b). In addition, the Act requires public agencies to post the

² Although not required under KRS 61.823, the City Council also posted notice of the meeting on its official website and Facebook page.

written notice in a conspicuous place in the building where the meeting will take place, and in the building that houses the headquarters of the agency, at least 24 hours before the meeting. KRS 61.823(4)(c).

On appeal, the City Council provided this Office a copy of the e-mail that the City Clerk sent to media organizations on Friday, April 24, 2020, approximately three days prior to the meeting. Attached to the e-mail was a copy of the special meeting agenda, which also provided the date, time, and the website at which members of the public could observe the meeting. Additionally, the City Council posted a copy of the notice and agenda “on the door” of, presumably, the headquarters for the City Council. The record on appeal demonstrates that the City Council complied with all notice requirements established in SB 150 and KRS 61.823. Therefore, it did not violate the Act.

Appellant raised one additional claim that indirectly alleged a violation of the Act. He claimed that the City Council was prohibited from conducting any meetings prior to April 30, 2020, due to an executive order issued by the Mayor on March 16, 2020. In that order, the Mayor cancelled all City Council regular meetings until after April 30, 2020. However, even though the regular City Council meetings prior to April 30, 2020, had been cancelled, nothing in the executive order prohibited the City Council from calling a special meeting. As discussed above, the City Council complied with all the requirements of KRS 61.823 prior to holding the April 27, 2020, special meeting.

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.

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/s/ Michelle D. Harrison

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Distributed to:

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