



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

20-OMD-172

November 12, 2020

In re: Kyle T. Thompson/Frankfort Board of Commissioners

Summary: The Frankfort Board of Commissioners (“Board”) engaged in conduct prohibited under the Open Meetings Act (“the Act”) by conducting a series of less-than-quorum meetings, where the members attending collectively constituted a quorum and discussed public business. However, the record on appeal does not contain sufficient evidence to determine whether the Board intended to violate the Act.

Open Meetings Decision

On October 7, 2020, Kyle T. Thompson (“Appellant”) submitted a written complaint to Mayor William May, the Board’s presiding officer, alleging that “at least three (3) members of the [Board] violated the provisions of KRS 61.810(2) when they conducted a series of nonpublic less-than-quorum-meetings to discuss the dismissal of City Manager Keith Parker to avoid the requirements of KRS 61.810(1).” Appellant raises the exact same complaint about the exact same conduct that this Office has already examined in 20-OMD-163.

Appellant suggested ways the Board could remedy the violation, but the Mayor denied any violation had occurred. The Mayor did admit that, in a series of discussions among members that would constitute a quorum of the Board, members discussed instances of the City Manager’s prior acts and omissions and placed the topic of his continued employment on the agenda for the meeting. But the Mayor denied the Board intended to avoid the requirements of the Act, and

claimed that members only sought to educate one another about incidents that had occurred. This appeal followed.

As previously stated, this complaint arises from the same facts as those analyzed in 20-OMD-163 (copy enclosed). Accordingly, the rationale of that decision is adopted herein, and need not be restated. However, the principle reason this Office found that no violation had occurred was the lack of evidence in the record demonstrating that the meetings were “held for the purpose of avoiding the requirements of” the Act. *See* KRS 61.810(2). That is, the members lacked the requisite intent to violate the Act. *See, e.g.,* 20-OMD-163 at p. 3-4; 13-OMD-067 (holding the same).

Here, Appellant offers no additional evidence. Instead, Appellant claims that a “commissioner” informed another individual prior to the meeting that the Mayor “already had three (3) votes to fire [City Manager Parker].” That “commissioner” was Mr. Tippett, the same commissioner who made the same statement to the City Manager in 20-OMD-163. The fact that Mr. Tippett allegedly made the same statement to multiple people does not change the fact that there is no evidence that the board’s members intended to avoid the requirements of the Act. Appellant also speculates that the members were motivated to avoid the requirements of the Act because the City Manager was popular in the community, and that some members supported his continued employment. Therefore, according to Appellant, a majority sought to obtain the votes in advance of a meeting and to exclude dissenting members from the discussions.

For the reasons expressed in 20-OMD-163, this Office concludes that the Board engaged in discussions about public business that were required to be held during a meeting open to the public.¹ However, this Office is unable to conclude that the Board’s conduct amounts to a violation of the Act because there is insufficient evidence to find that the members intended to avoid the requirements of the Act. KRS 61.810(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 shall

¹ Alternatively, those discussions could have been held in a closed session that was properly commenced under KRS 61.815 – *i.e.*, by a motion made during a meeting open to the public explaining the exception that permits the closed session and taking a vote on the motion.

be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings.

Daniel Cameron
Attorney General

/s/Marc Manley
Marc Manley
Assistant Attorney General

#352

Distributed to:

Kyle T. Thompson
William May
Laura Ross
M. Todd Osterloh