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20-OMD-177

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In re: Virginia Bland/Berea Human Rights Commission

Summary: The Berea Human Rights Commission (“Commission”) violated the Open Meetings Act (“the Act”) when it failed to provide proper notification of an upcoming meeting to one of its Commissioners and instead attempted to email notice of that meeting to a Commissioner who had not previously consented to such email notification of Commission meetings.

Open Meetings Decision

In a written complaint to the Commission’s presiding officer, Virginia Bland (“Appellant”), herself a Commissioner, alleged that the Commission had failed to give her proper notice of a special meeting that occurred on October 26, 2020. She also claimed that the Commission should have given notice of the special meeting on its social media accounts and that the Commission should not “change[] meeting dates.”

In its response to Appellant’s complaint, the Commission explained that it had attempted to send her notice of the meeting using an email address the Commission regularly uses to contact the Appellant. For unknown reasons, the email was not delivered. Although the Commission further vowed to post notice of special meetings on its social media accounts, the Commission states that the Act does not require such action. Unsatisfied with the Commission’s response, Appellant then initiated this appeal.

KRS 61.823 sets forth the notice requirements that a public agency must meet when it intends to hold a special meeting. Under KRS 61.823(4)(a), a written notice of the special meeting and accompanying agenda must “be delivered personally, transmitted by facsimile machine, or mailed 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.” Furthermore, “[t]he notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting.” *Id.* However, a public agency may provide the notice via email to those members (and media members) who have submitted a written request to receive email transmission of the notice. KRS 61.823(4)(b). “The written request [to receive notice by email] shall include the electronic mail address or addresses of the agency member or media organization.” *Id.*

Under the plain language of KRS 61.823(4)(b), a public agency may only email notices of special meetings to those members who have submitted a written request to receive such notices by email, and even then, only by sending the notice to the email address contained in the request. Here, there is no evidence to suggest that the Appellant asked to receive email notifications of meetings. Thus, this Office is unable to determine whether Appellant “filed a written request with the public agency indicating their preference to receive electronic mail notification in lieu of notice by personal delivery, facsimile machine, or mail.” KRS 61.823(4)(b). Even if the Commissioner had filed such written request, there is no evidence to suggest that the Commission sent the notice to the proper email address. For these reasons, the Commission violated the Act when it failed to deliver the notice to its commissioner as required by KRS 61.823.

On the other hand, the Commission properly rejected Appellant’s claim that the notice should have been posted on social media. KRS 61.823(4)(c) requires that the “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 Commission complied with that provision by posting notice of the special meeting in three conspicuous places at the Commission’s headquarters and by posting such notice at the location where the meeting was to occur. The Act does not require public agencies to post notices of special meetings on agency websites or social media accounts. *See, e.g.,* 20-OMD-035.

Finally, Appellant objects to the Commission's changing its established meeting dates. Contrary to Appellant's claim, however, KRS 61.823 expressly permits public agencies to hold special meetings, subject to the notice requirements discussed above.

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.

Daniel Cameron
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/s/Marc Manley
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Distributed to:

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