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In re: Shelley Raines Lewis/Mount Vernon City Council

Summary: The Mount Vernon City Council (“Council”) violated the Open Meetings Act (“the Act”) when it discussed general personnel matters in a closed session. The Council also violated the Act when it failed to respond timely to a complaint.

Open Meetings Decision

On January 21, 2021, Shelley Raines Lewis (“Appellant”), a member of the Council, submitted a written complaint to the mayor of Mount Vernon, the Council’s presiding officer. In her Complaint, the Appellant alleged that the Council had violated the Act at its December 17, 2020, meeting. She claimed that the Council entered closed session to discuss “personnel matters,” and that in closed session the Council discussed the city administrator’s anticipated resignation following his recent election to public office and whether to employ him on a contractual basis. Because the Council did not respond in writing to the complaint, this appeal followed.

The Act provides that when a public agency receives a complaint, it must determine “whether to remedy the alleged violation pursuant to the complaint” within three business days. KRS 61.846(1). On appeal, the Council states that it will consider the Appellant’s complaint at its next meeting and that it will respond at that time. But the Council offers no valid reason for its failure to

respond to the complaint within the time provided by the Act.¹ Thus, the Council violated the Act by failing to respond in writing to the Appellant's complaint.

The Council violated the Act in another way. Under KRS 61.810(1), “[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 a statutory exception permits discussion to occur in closed session. “Public business is the discussion of the various alternatives to a given issue about which the [agency] has the option to take action.” *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 474 (Ky. 1998).

On appeal, the Council claims that it lacks any authority to hire or terminate a city administrator. According to the Council, it cannot “take action” on the “various alternatives” to retaining a city administrator, so its discussion on that topic is not “public business” as defined in *Yeoman*.

Under KRS 83A.090(1), however, “the city legislative body shall . . . list [the] duties and responsibilities of the” city administrator. *See also* KRS 83A.080(1)(b) (“All nonelected city offices shall be created by ordinance which shall specify [p]owers and duties of office”). In her complaint, the Appellant claimed that the Council also discussed delegating the city administrator's tasks to other city employees. And the Council admits that it discussed “the effect [the city administrator's] elected position would have on his contractual duties.” Therefore, by discussing the duties and responsibilities of the city administrator, and the duties and responsibilities of other employees in light of the city administrator's departure, the Council engaged in discussions about matters over which it can act. Thus, the Council's discussion was about a matter of “public business” under KRS 61.810(1) and *Yeoman*.²

¹ The Council explains that the complaint was not timely answered under KRS 61.846(1) because it was made by a Council member rather than “a private citizen.” But the Act does not permit such disparate treatment of complaints on that basis.

² The Council also claims that it took no final action based on any discussions in closed session. But KRS 61.810(1) requires discussions about public business to occur in meetings open to the public. An agency's decision to take no action following an improper discussion in closed session does not affect whether a violation occurred. Similarly, the Council's plan to

Because the Council discussed matters of public business with a quorum present, its actions may be sustained only if an exception to the Act authorized the Council to hold those discussions in closed session. The Council invokes two. But neither applies here.

KRS 61.810(1)(f) permits a closed session for “[d]iscussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student.” However, “[t]his exception shall not be interpreted to permit discussion of general personnel matters in secret.” *Id.* With a fact pattern almost identical to this one, the Kentucky Supreme Court held that KRS 61.810(1)(f) does not permit public agencies to discuss the anticipated resignation of an employee in closed session. *Carter v. Smith*, 366 S.W.3d 414, 421 (Ky. 2012) (discussing the anticipated resignation of a superintendent). In that same decision, the Court also held that KRS 61.810(1)(f) did not permit the public agency to discuss, in closed session, whether to retain the resigning employee as an independent contractor. *Id.*

Here, the Council claims that the purpose of the discussion was “to let the Council know more about [the city administrator’s] situation and the effect his elected position would have on his contracted duties.” That may be true, but public agencies may not rely on KRS 61.810(1)(f) to enter closed session and discuss an employee’s anticipated resignation and subsequent appointment as an independent contractor. *Carter*, 366 S.W.2d at 421.

The Council also invokes KRS 61.878(1)(g). Under that provision, public agencies may enter closed session to hold discussions with “a representative of a business entity” or to discuss a specific business proposal, but only “if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business.” KRS 61.810(1)(g).

That provision has no application here. The hiring of a city administrator by personal service contract does not concern the siting, retention, expansion, or upgrading of a business entity. That is not what occurred here. Thus, KRS 61.810(1)(g) does not apply.

conduct the meeting a second time and hold the same discussions in open session does not negate the fact that the Council’s conduct violated the Act.

In sum, the Council violated the Act when it failed to respond timely to a complaint submitted under the Act. The Council also violated the Act when it discussed public business during a closed session where no exception to the Act authorized such discussions in closed session.

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/ James M. Herrick

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Distributed to:

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