



COMMONWEALTH OF KENTUCKY  
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**21-OMD-096**

May 27, 2021

In re: Julie Clay/Perryville City Council

**Summary:** The Perryville City Council (“Council”) did not violate the Open Meetings Act (“the Act”) when it prevented a person from commenting during a video teleconference meeting.

***Open Meetings Decision***

In a written complaint to the Mayor of Perryville, Julie Clay (“Appellant”) alleged that she had been blocked from commenting on the Council’s Facebook Live page while it broadcasted its March 4, 2021 meeting. In its response, the Council denied that its actions violated the Act. This appeal followed.

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.” The Act provides that a notice for any meeting conducted by video teleconference must “[p]recisely identify a primary location of the video teleconference where all members can be seen and heard and the public may attend in accordance with KRS 61.840.” KRS 61.826(2)(b).

In response to the novel coronavirus emergency, the General Assembly enacted Senate Bill 150 (“SB 150”), which became effective on March 30, 2020. Section 1(8)(b) of SB 150 provides that during the state of emergency, “a public agency may conduct any meeting . . . by live audio or live video teleconference.” For meetings conducted by teleconference, SB 150 expressly incorporates the notice requirements for special meetings under KRS 61.823. But along with the notice requirements stated in KRS 61.823, during the current public health

emergency, the agency must “[p]rovide specific information on how any member of the public or media organization can access the meeting.” SB 150 § 1(8)(b)3. That is important information. Without it, the public has no other way to attend a public meeting when the General Assembly has otherwise suspended the requirement to provide a primary physical location at which the public may attend the meeting. Therefore, when a public agency conducts a meeting by virtual means, the “specific information” required in the notice must include a phone number or website link or, at a minimum, directions for how the public may access the meeting.

Although a public agency conducting a video teleconference meeting under SB 150 must provide specific information that explains how the public may attend and observe the meeting, the public has no right under the Act to participate in discussions during the meeting. The public agency need only ensure that its *members* can be “seen and heard.” KRS 61.826(2)(b). KRS 61.826(2) does not require public agencies to ensure that members *of the public* are seen or heard. And this Office has long held that the Act does not require public agencies to permit public comments during meetings. *See, e.g.*, 95-OMD-99; 19-OMD-135.

The Council complied with KRS 61.826, as modified by SB 150, when it provided notice of the video teleconference meeting on March 4. The Appellant claims that she was prevented from commenting on the Council’s Facebook Live page where the Council was broadcasting the properly noticed meeting. But just as the Act does not require a public agency to permit public comments at its meetings, the Act does not require a public agency to permit virtual public comments at its virtual meetings. Therefore, the Council did not violate the Act.

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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Distributed to:

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