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21-OMD-119

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In re: Randall Knuckles/Bell County Fiscal Court

Summary: The Bell County Fiscal Court ("Fiscal Court") violated the Open Meetings Act ("the Act") when it failed to issue a written response to a complaint within three business days. However, the Fiscal Court did not violate the Act when comments submitted by a member of the public to a social media page broadcasting the meeting were deleted.

Open Meetings Decision

On May 20, 2021, in a written complaint to the presiding officer of the Fiscal Court, Randall Knuckles ("Appellant") alleged that comments he made on "Facebook Live" during the Fiscal Court's February 9, 2021 meeting were deleted.[1] Having received no response from the Fiscal Court, the Appellant initiated this appeal on June 10, 2021.

Upon receiving a complaint alleging a violation of the Act, a "public agency shall determine within three (3) [business] days . . . after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision[.]" Here, the Appellant submitted his

[1] The Fiscal Court has entered into an agreement with a local radio station in which the radio station broadcasts the meetings on the radio station's Facebook page. The February 9, 2021 meeting was not broadcasted on any social media pages owned by the Fiscal Court. The Appellant alleges that the local radio station was acting as an agent of the Fiscal Court, and that the local radio station is the party that deleted the Appellant's comments. The Appellant and the local radio station disagree about whether the Appellant's comments were intentionally or accidentally deleted.

written complaint on May 20, 2021, but the Fiscal Court did not respond until June 17, 2021, after this appeal was initiated. Therefore, the Fiscal Court violated the Act.

However, deleting the Appellant's social media comments, made during the meeting, is not a violation of the Act. 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. Therefore, when a public agency conducts a virtual meeting, 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.*, 21-OMD-096; 19-OMD-135; 95-OMD-99. Here, the Fiscal Court complied with KRS 61.826, as modified by SB 150, when it provided notice of the video teleconference meeting and provided specific information that explained how members of the public could access the meeting. The Fiscal Court was not required, under the Act, to permit public comments during the meeting.

The Appellant also claims that the Fiscal Court was required to preserve his social media comments as part of the "official record" of the meeting. The Act requires that "[t]he minutes of action taken at every meeting of any such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded[.]" KRS 61.835. "'Action taken' means a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body[.]" KRS 61.805(3). A public agency is not required to record the substance of discussions that occurred during the meeting in its minutes of the meeting. *See, e.g.,* 18-OMD-061; 11-OMD-017; 03-OMD-006. Therefore, the Fiscal Court did not violate the Act when it did not record the Appellant's social media comments in its minutes of the meeting.[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 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/Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Randall Knuckles
Neil Ward

[2] The Appellant's main concern is one of censorship. However, the purpose of the Open Meetings Act is to ensure that public business is not conducted in secret. KRS 61.800. The Act does not require a public agency to accept or consider public commentary.