



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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24-OMD-215

October 3, 2024

In re: Tina Burnell/Louisville Metro Ethics Commission

Summary: The Louisville Metro Ethics Commission (“the Commission”) violated the Open Meetings Act (“the Act”) when it conducted a meeting without adequate acoustics. The Commission did not violate the Act when it asked attendees to identify themselves but did not condition attendance at the meeting on their response.

Open Meetings Decision

On August 23, 2024, Tina Burnell (“the Appellant”) submitted a complaint by email to the Commission’s Metro HR Staff Liaison and the Commission’s independent legal counsel. In her complaint, the Appellant claimed the Commission had violated the Act at its July 18, 2024, meeting by using a room with unsatisfactory acoustics and “by requiring attendees to identify themselves in order to attend the meeting.” As a remedy, the Appellant proposed that the Commission use “audio equipment” to enhance audibility and that all members be instructed not to require attendees to identify themselves at public meetings. The Appellant initiated her first appeal after receiving no response from the Commission. The Office determined it lacked jurisdiction over the Appellant’s first appeal because her complaint was not first submitted to the presiding officer of the Commission. *See* 24-OMD-200.

Then on September 18, 2024, the Appellant submitted an identical complaint to the presiding officer of the Commission. In a timely response, the Commission denied having violated the Act but agreed to undergo an acoustics test to determine if any portion of the meeting room does not allow for effective observation of the meeting and to remedy any deficiency found to exist. The Commission also denied requiring attendees to identify themselves as a condition of attending the meeting but agreed that, in the future, it will make clear that attendance at meetings is not condition upon the attendee identifying himself or herself. This appeal followed.

If an agency agrees to remedy the alleged violation of the Act but the complainant believes the agency's proposed remedy is "inadequate," the Appellant may seek this Office's review "as if the public agency had denied the original complaint." KRS 61.846(3)(c).

When a public agency conducts a meeting under the Act, it is required to "provide meeting room conditions, including adequate space, seating, and *acoustics*, which insofar as is feasible allow effective public observation of the public meeting." KRS 61.840 (emphasis added). Here, the Appellant alleges the Commission violated the Act during the meeting because the inadequacy of the acoustics prevented her from hearing what the Commissioners were saying. In support of her claim, the Appellant directs the Office to a recording from the July 18 meeting where, after the Appellant stated, "It's hard to hear back here," the Commission's presiding officer stated, "I know, the acoustics in here are terrible." In response, the Commission denies that the room used for its meetings has poor acoustics because the room has been used for over a year with no complaints from the public until now.¹ Normally, the Office cannot resolve factual disputes between the parties. *See, e.g.*, 24-OMD-030; 22-OMD-236; 19-OMD-187; 12-OMD-080. But here, the Commission's presiding officer agreed that the Commission's meeting room has "terrible" acoustics. Accordingly, the Commission violated the Act when it conducted a meeting under the Act with inadequate acoustics.²

The purpose of the Act is to ensure the formation of public policy "shall not be conducted in secret." KRS 61.800. It is for this reason that "[n]o condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency [and] [n]o person may be required to identify himself *in order to attend any such meeting*." KRS 61.840 (emphasis added). Here, the Appellant alleges, and the Commission admits, that the presiding officer of the Commission asked her to identify herself at the July 18 meeting. But the Commission explains that the Appellant's attendance at the meeting was not conditioned on her response to the presiding officer, and that, when the Appellant declined to identify herself, "nothing was done in response, and [the Appellant] was allowed to attend all public portions of the meeting." The Appellant does not claim that she was required to leave the meeting after declining to identify herself. Accordingly, the Commission did not violate the Act when it asked attendees

¹ The Commission also asserts that it "does not have any particular space under its control" and "is at the mercy of [the Louisville] Metro Government with regard to its meeting space and its physical hardware."

² Alternatively, the Commission argues any acoustics inadequacy is "significantly obviate[d]" by the availability of meeting records that may be obtained through open records requests. But the Act's requirements that meeting room conditions include "adequate space, seating, and acoustics" is meant to facilitate "effective public observation of the public meeting." KRS 61.840. The availability of meeting recordings would not remedy inadequate space or seating at a public meeting. Likewise, the availability of meeting recordings does not remedy inadequate acoustics.

to identify themselves without conditioning attendance at the meeting on their response.

A party aggrieved by this decision may appeal it by initiating an 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. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
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Distributed to:

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