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24-OMD-218

October 4, 2024

In re: Dan Holman/City of Georgetown and Scott County Fiscal Court

**Summary:** The Office lacks jurisdiction to consider a complaint alleging the City of Georgetown (“the City”) and the Scott County Fiscal Court (“the Fiscal Court”) violated the Open Meetings Act (“the Act”) because the complaint was not first submitted to the presiding officer of a “public agency” subject to the Act.

***Open Meetings Decision***

Dan Holman (“the Appellant”) submitted a written complaint to the Mayor of the City and the Scott County Judge-Executive. In his complaint, the Appellant alleged that a “local government collaboration group” (“the Collaboration Group”) comprised of individuals representing several counties and cities is a “public agency” under the Act, and that the Collaboration Group violated the Act by not allowing the public to attend its meetings, not recording its meetings, and not making its meeting minutes available to the public. The Appellant requested the Collaboration Group acknowledge its violations of the Act, create a “comprehensive good faith package or documentation” regarding its actions to date, make future meetings open to the public, and “support an official ‘Alternatives’ committee.” In timely responses, the City and the Fiscal Court denied any violation of the Act. First, the City noted the Appellant did not submit his complaint to the presiding officer of a public agency, as required by the Act. *See* KRS 61.846(1). Further, the City and the Fiscal Court denied that the Collaboration Group qualifies as a “public agency,” and therefore, its meetings are not subject to the Act. This appeal followed.

As an initial matter, the Office must be assured of its jurisdiction to render a decision under KRS 61.846(2). A complainant’s request for the Attorney General to review an agency’s denial of a complaint under the Act is a statutory proceeding created by the General Assembly as an act of legislative grace. As such, a complainant must strictly comply with KRS 61.846 before invoking the Attorney General’s jurisdiction to review the complaint. *See, e.g.,* 22-OMD-177. To invoke the Attorney

General's review under KRS 61.846(2), a complainant "shall begin enforcement" under subsection (1) of the statute. KRS 61.846(1). That provision requires the complainant to "submit a written complaint to the presiding officer of the public agency suspected of" violating the Act. *Id.* Accordingly, to begin enforcement, the complainant may not submit his complaint to just any person at the public agency; he must send it to the agency's "presiding officer." In 22-ORD-177, the Office dismissed a complaint alleging the Jefferson County Public Schools Site Based Decision Making Council had violated the Act because the complainant failed to submit his complaint to the presiding officer of that agency. Rather, he submitted his complaint to the Superintendent of the Jefferson County Public Schools and to the school district's general counsel. Similarly, here, the complainant submitted his complaint to the Mayor of the City and to the Scott County Judge-Executive, not to any person who could arguably be considered "the presiding officer" of a public agency subject to the Act.<sup>1</sup>

In addition, the Appellant cannot comply with KRS 61.846(1) if the Collaboration Group is not a "public agency" subject to the Act. The City explains that the group is a "informal working group that meets on a voluntary, as-needed basis to facilitate" an application for state funding through the Kentucky Product Development Initiative ("KPDI") Program.<sup>2</sup> Moreover, the City explains that the group cannot act on its behalf, that all potential actions must be approved by the City Council, and the KPDI application can "continue without the City's Application."<sup>3</sup> For its part, the Fiscal Court explains that, pursuant to the KPDI application, the group has discussed forming a Regional Industrial Development Authority ("RIDA")<sup>4</sup> through an interlocal agreement.<sup>5</sup> The Fiscal Court and the City agree that those discussions are ongoing and have not yet been finalized.

The Act requires that "[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." KRS 61.810(1). Under KRS 61.805(2), "public agency" means:

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<sup>1</sup> The Appellant alleges only the Judge-Executive and Mayor were "originating members" of the Collaboration Group. But even accepting that assertion as true, being founding members of the Collaboration Group does not make either the Judge-Executive or the Mayor its presiding officer.

<sup>2</sup> See KRS 154.21-017 (establishing the Kentucky Product Development Initiative of 2024).

<sup>3</sup> The City also explains that any action it must take related to the KPDI application are discussed and voted on by its City Council in open session at its meetings.

<sup>4</sup> See KRS 154.50-301 to 154.50-350 (providing for the creation and operation of a local industrial development authority).

<sup>5</sup> See KRS 65.210 to 65.300 (Interlocal Cooperation Act).

- (a) Every state or local government board, commission, and authority;
- (b) Every state or local legislative board, commission, and committee;
- (c) Every county and city governing body, council, school district board, special district board, and municipal corporation;
- (d) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
- (e) Any body created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act in the legislative or executive branch of government;
- (f) Any entity when the majority of its governing body is appointed by a “public agency” as defined in paragraph (a), (b), (c), (d), (e), (g), or (h) of this subsection, a member or employee of a “public agency,” a state or local officer, or any combination thereof;
- (g) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff or a committee formed for the purpose of evaluating the qualifications of public agency employees, established, created, and controlled by a “public agency” as defined in paragraph (a), (b), (c), (d), (e), (f), or (h) of this subsection; and
- (h) Any interagency body of two (2) or more public agencies where each “public agency” is defined in paragraph (a), (b), (c), (d), (e), (f), or (g) of this subsection.

The Collaboration Group is not a “state . . . government board, commission, [or] authority.” KRS 61.805(2)(a). Nor does it serve any legislative functions. *See* KRS 61.805(2)(b) and (c). It is not a state or local government agency.

KRS 61.878(2)(d). And it is not yet an interagency body of two or more public agencies. KRS 61.805(2)(h).<sup>6</sup>

The Appellant first argues that the Collaboration Group is a public agency under KRS 61.805(2)(e). He points to a 2023 resolution by the City committing to spending matching funds as part of the KPDI application conditioned upon: (1) an award of KPDI grant funding; and (2) the approval of each governing body after an award of KPDI funding. But this resolution did not create the Collaboration Group. It merely stated the intent of the City to spend public funds if certain conditions are met. Such action did not create the Collaboration Group or make it a public agency as defined by KRS 61.805(2)(e). Similarly, the Appellant points to a 2024 resolution by the City designating its mayor as “its authorized representative and signatory for all matters related to the formation of the” RIDA. But this resolution did not create the Collaboration Group and, therefore, does not cause it to meet the KRS 61.805(2)(e) definition of a public agency.<sup>7</sup>

The Appellant also argues that the City’s 2024 resolution made the Mayor a public agency pursuant to KRS 61.805(2)(g) and that “individuals he selects to join him are also a public agency.” But the Mayor, as an individual, cannot be a “board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency” created or controlled by a public agency. KRS 61.805(2)(g).

Finally, the Appellant argues that “the circumstances of the various other entities . . . joining together into” the Collaboration Group make it a public agency under KRS 61.805(2)(f). Under that provision, “[a]ny entity when the majority of its governing body is *appointed* by a ‘public agency’ as defined in paragraph (a), (b), (c), (d), (e), (g), or (h) of this subsection, a member or employee of a ‘public agency,’ a state or local officer, or any combination thereof” qualifies as a public agency. KRS 61.805(2)(f) (emphasis added). The Appellant argues that “pretty much everyone currently in the group was appointed by one of the original members, who are members of a public agency . . . or are state or local officers.” Further, the Appellant alleges that “[m]embers are assigned and paid to be there.” For their part, the City and the Fiscal Court both maintain that participation in the Collaboration Group is informal and voluntary. The Office cannot resolve factual disputes between the parties. *See, e.g.*, 24-OMD-030; 22-OMD-236; 19-OMD-187; 12-OMD-080. Thus, the Office cannot determine whether those involved in the Collaboration Group were “appointed by a public agency,” or whether those individuals participate in the group

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<sup>6</sup> Neither the Fiscal Court nor the City disputes that a body created pursuant to an interlocal agreement is a public agency subject to the requirements of the Act. *See, e.g.*, KRS 65.243(6) (“An interlocal agency created by an interlocal agreement shall be deemed to be a public agency as defined in KRS 61.805”). Rather, the Fiscal Court and the City explain that the interlocal agency has not been created yet, and therefore, there is not yet a new agency subject to the requirements of the Act.

<sup>7</sup> Indeed, the Collaboration Group appears to have predated both resolutions, and so it could not have been created by either resolution.

on an informal and voluntary basis. Accordingly, the Office cannot find that the Collaboration Groups is a “public agency” under the Act.

At bottom, the Office cannot conclusively determine whether the Collaboration Group is a public agency as defined by KRS 61.805(2)(f). But, because the Appellant has not submitted his complaint to any person who is “the presiding officer” of a public agency, the Office lacks jurisdiction to consider it.

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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