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25-OMD-097

April 8, 2025

In re: James Orlick/House Standing Committee on Postsecondary Education

Summary: The House Standing Committee on Postsecondary Education ("the Committee") violated the Open Meetings Act ("the Act") when it failed to issue a written response to a complaint within three business days. However, the Office lacks jurisdiction to determine whether the Committee followed its own legislative procedures.

Open Meetings Decision

On March 11, 2025, James Orlick ("the Appellant") submitted a complaint to the presiding officer (*i.e.*, the chairman) of the Committee, alleging the Committee violated KRS 61.810(1) when it reconvened to vote on a title amendment to a bill, House Bill 4 ("HB 4"), after it had adjourned. As a remedy, the Appellant proposed that the Committee "acknowledge that it's [*sic*] post-adjournment motion and vote" were "of no legal effect." Having received no response from the Committee, the Appellant initiated this appeal on March 25, 2025.

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." KRS 61.846(1). On appeal, the Committee does not deny that it failed to respond to the Appellant's complaint. Thus, the Committee violated the Act.

Turning to the merits of the complaint, 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." According to the Appellant, the Committee violated KRS 61.810(1) by adjourning its meeting, and shortly thereafter reconvening to vote on a title amendment to a bill the Committee had been discussing at the meeting. Thus, it is the Appellant's position that, once its chairman announced that the

Committee's meeting was adjourned, the Act bars the Committee from immediately reconvening to act on an amendment to the bill previously under discussion.

As support for this position, the Appellant relies on a line of decisions addressing circumstances in which public agencies purported to recess a meeting and reconvene at a later date. *See* 93-OMD-123. There, rather than limit itself to the text of the Act, the Office looked to *Robert's Rules of Order*, *Mason's Manual of Legislative Procedure*, and a legal treatise to "determine the status of such meetings." Relying on those sources, the Office created a non-textual distinction between recesses, which pause a meeting, and adjournments, which end a meeting. That opinion has since been approvingly cited by the Office. *See, e.g.*, 02-OMD-127; 08-OMD-115. The Appellant relies on these decisions for the principle that, once adjourned, a public agency may not immediately reconvene without following the procedures to convene a new meeting. However, these outside sources cannot be superimposed onto the Act. To the contrary, the Office also has routinely held that the Act does not require public agencies to follow any particular rules of parliamentary procedure, such as *Robert's Rules of Order*, to conduct its meetings. *See, e.g.*, 22-OMD-211; 14-OMD-091 n.3; 09-OMD-188; 05-OMD-117. Thus, the Office declines to follow the line of prior decisions that cited rules of parliamentary procedure to make nontextual distinctions between recesses and adjournments.

In this appeal, the Appellant asks the Office to determine whether the Committee may reconvene a meeting—immediately after the chairman announced the meeting was adjourned—to complete the Committee's business it inadvertently had not finished. Thus, in effect, the Appellant asks the Office to determine the legality of the procedures used by a standing committee of the General Assembly. This the Office cannot do.

In *Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74 (Ky. 2018), the Supreme Court of Kentucky addressed the procedures to be followed by the General Assembly to satisfy the requirements of Section 46 of the Kentucky Constitution. The Court's opinion addressed whether the General Assembly had followed the specific requirements of the Constitution. However, the Court "emphasize[d] . . . that this opinion does not challenge the legislative process used" by the General Assembly because "[t]he procedure itself is a matter beyond [the Court's] sphere of authority." *Id.* at 91. By so stating, the Court recognized that, where the rules of parliamentary procedure are not specifically prescribed by the Constitution, the General Assembly alone may decide what procedures it will apply during the legislative process and whether those procedures have been followed. The General Assembly's "sphere of authority" includes determining when a meeting of a standing committee has been adjourned, and whether a quorum of the Committee may continue to conduct its legislative business when its chairman inadvertently announced that the meeting was adjourned before the Committee's business was completed.

Adopting the reasoning of the Appellant's complaint—that the Committee violated the Act by reconvening immediately after its meeting had adjourned—would necessarily entangle the Office in dictating to the General Assembly how it must go about the legislative process. But, just as the rules of legislative procedure are "beyond [the Court's] sphere of authority," those rules also are beyond this Office's jurisdiction under the Act.

Moreover, even if the Office had jurisdiction to evaluate the Committee's compliance with its own procedural rules, the Committee explains on appeal that this matter is moot. According to the Committee, the vote at issue concerned a title amendment to HB 4, specifically House Committee Amendment 1. But after HB 4 was reported by the Committee, the full House of Representatives voted to adopt House Committee Amendment 1 to the bill. Upon adoption of House Committee Amendment 1 by the full House, the issue of whether the Committee properly voted on the amendment became moot.[1]

Then, after the House of Representatives passed HB 4, the Senate further amended the bill, including adopting its own title amendment, Senate Floor Amendment 19. When the amended bill was returned to the House, the House also concurred in Senate Floor Amendment 19. And so, even if House Committee Amendment 1 were to be voided due to a violation of the Act by the Committee, it would have no effect on the final passage of HB 4. The text of the enrolled bill approved by both the House and Senate and presented to the Governor did not include the title provided by House Committee Amendment 1. Rather, the title of the enrolled bill was the title provided by Senate Floor Amendment 19. Therefore, any decision of this Office would have no practical effect.

To sum up, the Office's role in adjudicating a dispute arising under the Act is to determine "whether the agency violated the provisions of KRS 61.805 to 61.850." KRS 61.846(2). Determining the rules of legislative procedure to be used by the House of Representatives or the Senate, or any committee thereof, is solely the province of the Legislative Branch. *See* Ky. Const. § 39 ("Each House of the General Assembly may determine the rules of its proceedings. . . ."). Just as those rules are outside the "sphere of authority" of the Supreme Court, they are outside the jurisdiction of this Office under the Act. The Office therefore cannot find that the Committee violated the Act.

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[1] The Kentucky Constitution generally requires *a bill* to be reported by a committee before the House of Representatives may vote on final passage of the bill. Ky. Const. § 46. But the Constitution does not require *an amendment* to a bill also to be reported by a committee. The House may adopt any amendment it wishes to the bill while the bill is on the floor, whether or not the amendment ever came before a committee. And under the current rules of the House, any amendments recommended by a committee still must be approved by the full House before they are deemed adopted.

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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Assistant Attorney General

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Distributed to:

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