



COMMONWEALTH OF KENTUCKY
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12-OMD-080

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In re: Kevin Brumley/Bardstown City Council

Summary: Bardstown City Council admittedly violated KRS 61.823(4)(c) in failing to post written notice of its March 6, 2012, special meeting "in a conspicuous place in the building where the special meeting" was held. To the limited extent the brief discussion held at special meeting exceeded the scope of the single item listed on the agenda contained in the notice, that discussion was not authorized under KRS 61.823(3).

Open Meetings Decision

The question presented in this appeal is whether the Bardstown City Council violated the Kentucky Open Meetings Act in failing to fully comply with notice requirements codified at KRS 61.823(4)(c), prior to a special meeting held on March 6, 2012, and in failing to restrict discussion at said meeting to the single item listed on the agenda in the notice per KRS 61.823(3). Insofar as the City Council admittedly failed to post a copy of the notice "in a conspicuous place in the building where the special meeting" was held on March 6, 2012, it violated KRS 61.823(4)(c). The City Council has further acknowledged that "the Notice of the Special Meeting was defective in that it did not properly reference the appointment of the City of Bardstown Fire Chief." To the very limited extent any discussion went beyond the item actually listed on the agenda, namely, "Approval of the Bardstown/Nelson County Fire Department Chief,"¹ that

¹ In response to Mr. Brumley's appeal, City Attorney Thomas A. Donan explained that of the two entities referenced in this appeal, one is the Bardstown Fire Department, "operated under the



discussion violated KRS 61.823(3) regardless of whether any kind of action was taken; however, the entire meeting lasted for less than four minutes, and consisted of the Mayor generally, but exclusively, stating his general position regarding the ongoing controversy related to filling the Fire Chief position² before permitting a citizen to briefly voice his opinion regarding that general subject matter upon request. Because most of Mr. Brumley's related allegations, underlying concerns, questions, and complaints are well beyond our scope of review under KRS 61.846(2), this office makes no finding with the exception of the acknowledged violations noted above.

In a written complaint directed to Mayor William S. Sheckles on March 19, 2012, Mr. Brumley alleged the following violations of the Act:

1. Your "special meeting" of March 6, 2012 violated the minimum 24 hour notice provisions of the Open Meetings Act.

City of Bardstown," and the other is the Bardstown-Nelson County Volunteer Fire Department, Inc., a "non-profit corporation which serves an unincorporated area of Nelson County, Kentucky." According to Mr. Donan, these two entities "share equipment, facilities, and volunteers. Both entities are supported by volunteer firefighters who volunteer to fight fires in both geographic locations. The paid firefighters are considered City employees and the non-profit corporation pays money to the City toward some of the firefighters' salaries pursuant to a contract." In his complaint, Mr. Brumley noted that existing arrangements between the two, including the agreement to share a common Fire Chief, apparently "went out the door this January, when Marlin Howard was voted in and your alleged Fire Chief, Anthony Mattingly, was voted out by a vote of 32-12."

In short, Mr. Brumley's complaint makes it clear that his underlying concern stems from the alleged "refusal" of Mayor William S. Sheckles "to accept and honor the results of this election" which "has resulted in more chaos and discord within the fire departments [sic] ranks in the past 2 months than in the previous 50 years" combined. (Original emphasis.) However, none of the issues regarding the various ways in which Mayor Sheckles allegedly exceeded the scope of his authority, etc. are justiciable in this forum. Thus, in the interest of efficiency, this office declines to summarize all of the peripheral contentions in Mr. Brumley's lengthy complaint and/or his seven-page (not including attachments) letter of appeal, focusing instead on the allegations in his complaint and the response(s) of the agency.

² According to a newspaper (*The Nelson County Gazette*) article dated March 5, 2012, "Mayor Bill Sheckles met Monday evening with members of the Bardstown-Nelson County Fire Department to listen to firefighters' concerns and discuss his plan to hire a single fire chief who will serve as chief of both the city-funded fire department and the incorporated volunteer department." Following that meeting, the Mayor "brought an ordinance to the city council to remove the election process from the chief selection process and have the chief selected by the mayor with the council's approval."

2. Your March 6, 2012 "special" meeting violated the Act by failing to meet all the posting requirements of notices containing the time, date, location and agenda to be posted in a conspicuous place in the building that houses both the agency, and the building the meeting is held in, if they are not one and the same.

3. The "special meeting" of March 6, 2012 was an illegal meeting in its entirety, since the only subject of the agenda, was the "approval of the Bardstown/Nelson County Fire Department Chief" which is not a subject under the authority or control of the Mayor

4. Your March 5, 2012 "special meetings" [sic] agenda's sole subject being the "approval of the Bardstown/Nelson County Fire Department Chief was never brought up or discussed amongst the [C]ouncil. You gave an approximate[ly] 3:42 minutes [sic] off agenda, monologue

5. There was off topic conversation allowed by the Mayor, in this so called "special meeting" of March 6, 2012. One example of this . . . occurred when you . . . opened the floor to the public for discussion

(Original emphasis.)

To remedy the alleged violations, Mr. Brumley made "10 proposals," including, but not limited to suggesting that Mayor Sheckles officially declare the special meeting as illegal "in its entirety," and then apologize to various media outlets "for wasting their time and money reporting on this illegal meeting," as well as the firefighters, citizens in attendance, *etc.* Mr. Brumley further proposed that the City Council "cease and desist" having such illegal special meetings, that Mayor Sheckles "personally reimburse any party that was monetarily aggrieved in anyway [sic]," and, in his capacity as Mayor "via a Municipal Order" require himself, members of the City Council, and "all other City of Bardstown officials, and administration personnel" to read and "fully comprehend" two free publications regarding the Kentucky Open Records and Open Meetings Acts. (Original emphasis.) Finally, Mr. Brumley proposed "that a series of working

sessions of the [City Council] be dedicated and scheduled at the next meeting of the [City Council] for the purpose of educating all concerned on the mechanics of the Open Meetings Act," and that a "working session" be held annually "as a refresher course[.]"

By letter dated March 23, 2012,³ City Attorney Thomas A. Donan responded on behalf of the City Council, initially advising that his understanding from the City Clerk was "that you came to City Hall the day before the Special Meeting and asked where the Notice of Special Meeting was located." Ms. Blincoe "stated that she directed you to the entrance to the Recreation Department/City Council Chambers where the Notice of the Meeting was posted more than twenty-four (24) hours prior to the Meeting." Accordingly, the City Council disagreed with Mr. Brumley's claim that "the Notice and Agenda of the Special Meeting on March 6, 2012 was not placed in a conspicuous place in the building where the Special Meeting took place as required by KRS 61.823(4)(c) [mistakenly cited as (b)]." The City Council also disagreed with Mr. Brumley's complaint that the "written 24 hour notice requirement was violated. The written notice was properly transmitted to media organizations on March 5, 2012 at 3:14 p.m." Mr. Donan acknowledged that the "Notice of the Special Meeting was defective in that it did not properly reference the appointment of the City of Bardstown Fire Chief. Therefore, no action could be taken at the Special Meeting." However, the City Council noted, "the minutes of the Special Meeting for March 6, 2012 at 5:00 p.m. reflect that no action was taken by the City Council on that or any other matter. Therefore, there was no violation of the Open Meetings Act."

Mr. Brumley subsequently initiated this appeal, clarifying that his complaint related to compliance with KRS 61.823(4)(c), rather than 61.823(4)(a) or (b), and the failure to post a copy of the notice in *both* of the required places 24 hours in advance specifically, notwithstanding his omission of a specific reference to any of the above in his complaint. He further noted that the item listed on the agenda "was perfectly fine for the intention of the meeting, which

³ In failing to issue a written response within three business days of receiving Mr. Brumley's hand-delivered complaint of March 19, the City Council violated KRS 61.846(1). Because the parties are both clearly familiar with KRS 61.846(1) and well-established law regarding its application, this office will not unnecessarily belabor the point.

was a [M]ayor operating, *ultra vires*, out of the scope of his authority." Mr. Brumley also emphatically argued that in deciding to "withdraw" the subject matter listed, "put that situation on hold" and keep the Interim Chief in place, but making related comments, *i.e.*, his intention to avoid burdening the taxpayers of Bardstown or Nelson County, *etc.* in what Mr. Brumley characterized as "an impromptu [M]ayor's address to the crowd of firefighters and concerned citizens," and then also permitting a citizen to state his opinion that any search for a new Fire Chief should be limited to qualified individuals within the community, the agency violated KRS 61.823(3).⁴

Upon receiving notification of Mr. Brumley's appeal from this office, Mr. Donan supplemented his response on behalf of the City Council. Mr. Donan first explained that he interpreted Mr. Brumley's first allegation "to relate to the Media Notice." For that reason, the City Council disagreed as the written notice "was properly transmitted to media organizations on March 5, 2012 at 3:14 p.m. (1514) hours in compliance with KRS 61.823(4)(a) and (b)." Enclosed with his response was a hard copy of the notice forwarded to members of the media via e-mail. The City Council agreed that it "failed to post the Notice of the Special Meeting at City Hall as required by the statute." However, the City Council did post a copy of the notice at the City Council Chambers. Mr. Donan further observed that Mr. Brumley did not dispute the latter fact.

With regard to KRS 61.823(3), Mr. Donan again conceded that the notice was "defective in that it did not properly reference the approval of the appointment of the City of Bardstown Fire Chief[,] but reiterated that "no action was taken by the City Council on that or any other matter." The only discussion which occurred, Mr. Donan correctly noted, "was an explanation by the Mayor that he was not going forward with the Special Meeting and his reasoning in not going forward. One member of the public made a comment about the selection

⁴ In his view, the minutes of the March 6 special meeting are not "an accurate record of votes and actions taken" by the agency per KRS 61.835 given that one member of the six-member City Council was not actually present as the DVD recording confirms; however, the minutes reflect that the vote for adjournment was 6-0. Although the record on appeal seems to substantiate this assertion, further discussion is unwarranted given that Mr. Brumley did not make this claim in his original complaint and the issue is therefore not ripe for review. On appeal, the City Council "agrees that the minutes of the Special Meeting need to be corrected." Mr. Donan observed that said minutes "were approved at a subsequent meeting when both the Mayor and the City Attorney were absent."

of a fire chief." Further, the motion to adjourn "was an appropriate motion for a Special Meeting and did not need to be on the Agenda." In closing, Mr. Donan indicated that he and the City Clerk "have reviewed the Statute and procedures relating to Special Meetings of the City Council and the coordination of Notices of Special Meetings in order to avoid future violations of the Open Meetings Act."

As a threshold matter, this office reminds the parties that our specific role in adjudicating a dispute arising under the Open Meetings Act is narrowly defined by KRS 61.846(2), pursuant to which the Attorney General "shall review the complaint and denial and issue within ten (10) days, excepting Saturdays, Sundays, and legal holidays, a written decision which states whether the agency violated the provisions of KRS 61.805 to 61.850." Our decisions "involve the application and interpretation of the requirements of the Open Meetings Act, and are in the nature of questions of law." 00-OMD-142, p. 6. In sum, this office cannot resolve factual disputes in the context of an Open Meetings Appeal nor does it conduct hearings, gather evidence, interview witnesses, *etc.* in resolving disputes arising under the Open Meetings Act; only the courts are vested with authority to perform such functions. Likewise, this office is not authorized to address the many tangential or underlying issues and concerns that Mr. Brumley raised in his appeal.

Based upon the undisputed facts presented, this office agrees that the City Council violated KRS 61.823(4)(c) in failing to not only post a written notice of the March 6 special meeting "in a conspicuous place in the building which houses the headquarters of the agency," but also "in a conspicuous place in the building where the special meeting" was going to occur "at least twenty-four (24) hours before the special meeting." To the very limited extent any discussion occurred which did not relate only to the sole item listed on the agenda, namely, "Approval of the Bardstown/Nelson County Fire Department Chief," as opposed to "appointment of the City of Bardstown Fire Chief," that discussion was impermissible under KRS 61.823(3) notwithstanding the fact that no action was taken with the exception of the vote to adjourn the meeting.

In construing KRS 61.820, and its companion statute, KRS 61.823, relating to special meetings, the Attorney General has long recognized:

Under the Open Meetings Act there are only two kinds of meetings. Regular meetings are governed by the provisions of KRS 61.820 and special meetings are controlled by the provisions of KRS 61.823. If the public agency holds a meeting in addition to, outside of, or in place of the regular meeting schedule that meeting is a special meeting and the provisions of KRS 61.823 must be followed. Those provisions include requirements pertaining to the written notice and the agenda, the delivery of the notice, and the posting of the notice. *Failure to follow all of these provisions constitutes a violation of the Open Meetings Act.*

92-OMD-1840, p. 3 (emphasis added); 02-OMD-11. Significantly, the Kentucky Court of Appeals recognized that "the intent of the legislature in enacting the Open Meetings Act was to ensure that the people of the Commonwealth are given advance notice of meetings conducted by public agencies." *E. W. Scripps Company v. City of Louisville*, 790 S.W.2d 450, 452 (Ky. App. 1990). Echoing this view, the Kentucky Supreme Court has confirmed that the "express purpose of the Open Meetings Act is to maximize notice of public meetings and actions. The failure to comply with the strict letter of the law in conducting meetings of a public agency violates the public good." *Floyd County Board of Education v. Ratliff*, 955 S.W.2d 921, 923 (Ky. 1997), citing *E. W. Scripps Co., above*. As the foregoing authorities illustrate, "Kentucky's legislature, as well as its judiciary, have thus demonstrated their commitment to 'open government openly arrived at.'" 99-OMD-146, p. 4, citing *Maurice River Board of Education v. Maurice River Teachers*, 455 A2d 563, 564 (N. J. Super. Ch. 1982).

To promote this goal, the Open Meetings Act establishes specific requirements for public agencies which must be fulfilled prior to conducting a special meeting. In relevant part, KRS 61.823 provides:

- (3) The public agency shall provide written notice of the special meeting. The notice shall consist of the date, time, and place of the special meeting and the agenda. *Discussions* and action at the meeting shall be limited to items listed on the agenda in the notice.

- (4)(a) As soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to every member of the public agency as well as each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting. . . .
- (c) As soon as possible, written notice shall also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building which houses the headquarters of the agency. The notice shall be calculated so that it shall be posted at least twenty-four (24) hours before the special meeting.

(Emphasis added.) "The language of the statute directing agency action is exact." *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996). It requires the public agency to deliver written notice, consisting of the date, time, and place of the meeting and the agenda, to members of the public agency, and media organizations that have requested notification, at least 24 hours before the meeting is to occur. This notice may be "delivered personally, transmitted by facsimile machine, or mailed . . .," or sent via electronic mail per KRS 61.823(4)(b). The record on appeal confirms that the City Council discharged this duty. However, the Act further mandates that public agencies post the written notice both in a conspicuous place in the building where the meeting will take place, and in the building which houses the headquarters of the agency, at least 24 hours before the meeting.

Resolution of this appeal turns primarily on the mandatory posting requirements codified at KRS 61.823(4)(c). Inasmuch as the City Council has acknowledged failing to post the written notice in the building where the meeting was going to be held, City Hall in this instance, in addition to its headquarters ("Chambers"), and it stands to reason that consequently no such notice was posted there 24 hours in advance, this office sees no reason to belabor the point any further, as the law is well-settled regarding application of these provisions. See 11-OMD-019. However, this office does note that the City Council acted reasonably in first assuming that Mr. Brumley was alleging a

violation of KRS 61.823(4)(a) by asserting separately and somewhat vaguely that it failed to satisfy "the minimum 24 hour notice provisions of the Open Meetings Act."

In light of this determination, the question becomes whether the City Council limited the discussion at its March 6 special meeting to the sole item listed on the agenda in the notice. As the Attorney General has consistently recognized:

[T]he public has a right to expect strict compliance with the requirement that discussions *and* actions taken at the meeting be limited to items listed on the agenda contained in the notice. Because no agenda is required for a regular meeting under KRS 61.820, public agencies are not bound by any limitation relative to the discussion of, or actions on, matters with which they are entrusted in the course of those meetings. Public agencies do not enjoy the same freedom to discuss, *or* act upon, matters entrusted to them in a special meeting, but are, as noted, restricted to discussion, *or* action on, agenda items.

01-OMD-175, p. 6 (emphasis added); 05-OMD-138. Contrary to the City Council's position, the fact no action was taken regarding the item listed on the agenda in this case does not render any discussion which exceeded the scope of that item, albeit marginally, appropriate; both were prohibited.

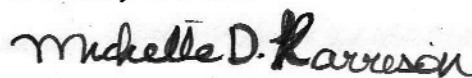
Here, the sole topic of discussion was described as the "Approval of the Bardstown/Nelson County Fire Department Chief." The City Council has conceded the notice "was defective in that it did not properly reference the appointment of the City of Bardstown Fire Chief." According to Mr. Brumley, this description would also have been equally inaccurate as Mayor Sheckles "wasn't **appointing the Bardstown Fire Chief**, he was seeking the 'approval' [of the] Bardstown/Nelson County Fire Department Chief." (Original emphasis.) Although the Bardstown Fire Department and the Bardstown-Nelson County Volunteer Fire Department are indisputably separate entities, the written record makes it abundantly clear that the two have been closely interconnected historically. Acknowledging this close working relationship, Mayor Sheckles expressly stated to firefighters in attendance that as far as he is concerned "you

all are and you will always be one and the same," which might partially account for the imprecise terminology utilized notwithstanding the distinctions between the departments or the legal implications thereof, none of which are subject to comment here.

Although the Mayor's brief and general statement regarding the current status of his plan to hire a joint chief, and the isolated comment by a member of the public related at least indirectly to the item that was listed on the agenda (or the one actually intended) are sufficiently connected to make it a very close question, especially when viewed in context, or given the level of public awareness regarding this ongoing situation, to the limited extent such discussion did not focus exclusively on "Approval of the Bardstown/Nelson County Fire Department Chief," it was contrary to KRS 61.823(3). The City Council implicitly conceded as much in acknowledging that the description of the item listed on the agenda was "defective" insofar as it did not specifically reference "appointment of the . . . Bardstown Fire Chief." Because KRS 61.823(3) is clear on its face, and the law is well-established, additional discussion is unnecessary.

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 should be notified of any action in circuit court, but should not be named as a party in that action or in any subsequent proceedings.

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Distributed to:

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