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February 15, 2017

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225 Elmcrest Dr.
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Re: Complaint for Violation of Open Meetings Act

Dear Council Members:

This office represents the Office of the Mayor of Bardstown, Kentucky. By way of this letter, the Office of the Mayor hereby serves Notice of its formal Complaint with regard to the City Council's violation of the Open Meetings Act at the City of Bardstown Council meeting that took place on January 24, 2017, specifically with regard to your adjournment to an attempted "Executive Session" at 8:00 p.m. during that meeting, as well as your unlawful exclusion of the Mayor, the City Attorney, and City Clerk.

KRS 61.810 requires that all meetings of a quorum of the members of any public agency at which public business is discussed or any action taken by the agency shall be open to the public at all times. While there are exceptions contained in KRS 61.810(c), those sections are extremely narrowly construed, and the failure to comply with the strict letter of the law in conducting meetings of a public agency violates the public good. *Floyd County Bd. Of Educ. v. Ratliff*, 955 S.W.2d 921, 923 (Ky., 1997).

Without any additional explanation, you cited at the meeting that you were moving to Executive Session pursuant to the purported exemption found at KRS 61.810(f), which states:

"Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student without

restricting that employee's, member's, or student's right to a public hearing if requested. This exception shall not be interpreted to permit discussion of general personnel matters in secret."

KRS 61.815(1)(a) required that, in addition to citing the specific provision of KRS 61.810 authorizing the closed session, you were required to give "in regular open meeting of the general nature of the business to be discussed in closed session," as well as "the reason for the closed session." A review of the tape of that meeting reveals that you did not do that. In addition, ~~KRS 61.815(1)(d)~~ makes clear that "no matters may be discussed at a closed session other than those publicly announced prior to the convening of the closed session." It is clear from the immediate, subsequent transaction that matters were discussed unrelated to the exemption you cited.

It should be noted that your cited exemption would appear to be inapplicable in any event, because, pursuant to KRS 83A.130(3) and (9), only the Mayor has the executive authority to supervise employees and only the Mayor has the authority to appoint and remove city employees, and subsection (11) of that statute makes clear that the Council is prohibited from performing any of these executive functions. Moreover, matters discussed cannot be "expanded to include general discussions of 'everything tangential to the topic,'" and exemptions should not be construed to apply "anytime a public agency has its attorney present." *Ratliff, supra*, 955 S.W.2d at 924.

Finally, the City Council broke the law when it prohibited the Mayor's attendance at the meeting in Executive Session, even going so far as to physically unplug a microphone recorder to prevent public transparency. KRS 61.130(5) makes clear that the Mayor presides over Council meetings, and the City Council is prohibited from exercising municipal orders that deny this mayoral power at the council's whim. *Smith v. Falk*, 885 S.W.2d 702 (Ky., 1994).

Given the Council's lack of authority to discipline employees as a matter of law, the immediate, subsequent action of the City Council in passing a municipal order regarding the "expanded investigation," and further that the "expanded investigation" now appears to have been conducted prior to the meeting (with letters dated January 17, 2017), it is clear that the Executive Session held from 8:00 p.m. to 8:55 p.m. was nothing more than a subterfuge to prevent the public from hearing the Council's activities in that meeting for other purposes.

As a result of these numerous and blatant violations of the Kentucky Open Meetings Act, all actions of the Council at and resulting from the meeting, including the municipal order, records and documents flowing from the "expanded investigation," and all costs, expenses and attorney fees of that matter, are voidable, and a party moving for relief from the illegal action in Circuit Court is entitled to recover its reasonable attorney fees, costs, and expenses to pursue the breach. *Carter v. Smith*, 366 S.W.3d 414 (Ky., 2012).

By way of this letter, the Office of the Mayor demands the Council make:

a) immediate retraction of the motion and action dated January 24, 2017 following the Executive Session in which the Council unanimously approved the "expanded investigation";

b) immediate public acknowledgement of the Council's violation of the Kentucky Open Meetings law;

c) immediate replevin of all documents, records, statements and/or other materials obtained pursuant to the "expanded investigation";

d) immediate voidance of any contracts generated, as well as fees, costs, and expenses generated, pursuant to the "expanded investigation" illegally authorized; and

d) reimbursement of all costs, expenses, and fees incurred by the Office of the Mayor in pursuing correction of this breach.

We expect this corrective action to be taken within the time period required by law.

Sincerely,



Jason P. Floyd
Counsel, Office of the Mayor

jpf

cc: Mayor John Royalty
Hon. Scott Crosbie
Hon. Tim Butler