



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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20-OMD-092

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In re: Central Kentucky New-Journal/Taylor County Fiscal Court

Summary: The Taylor County Fiscal Court ("County") violated the Open Meetings Act ("the Act") by excluding a member of the press from the meeting room when the meeting was not conducted under the provisions of Senate Bill 150.

Open Meetings Decision

In response to the public health emergency caused by the novel coronavirus, the General Assembly passed Senate Bill 150 ("SB 150"). Containing an emergency clause, SB 150 became law upon the Governor's signature on March 30, 2020. For the duration of the state of emergency, SB 150 is the controlling authority in instances where the public agency invokes its provisions. However, a public agency that does not "conduct" its meeting "by live audio or live video teleconference during the period of the state of emergency" is subject to the provisions of KRS 61.800 *et seq.* See 2020 Ky. Acts ch. 73 § 1(8)(b). Because the County did not conduct its meeting by video teleconferencing, SB 150 does not apply.

On May 12, 2020, the County held its regular fiscal court meeting, purportedly by video teleconferencing. However, every fiscal court member appeared in-person at the meeting location. No member appeared by video teleconference. Nevertheless, the County issued a notice stating that the meeting would be conducted via video teleconferencing and the notice provided a website where members of the public could access the meeting. A reporter for Central

Kentucky News-Journal (“Appellant”) attempted to attend the meeting in-person also, but the County did not permit his entry. Thereafter, Appellant submitted a written complaint to the County Judge/Executive seeking to remedy the alleged violation, which was ultimately denied. Appellant now appeals.

During the state of emergency, the General Assembly has given public agencies certain flexibility in how it may conduct a public meeting—whether in-person or by video or audio teleconference. 2020 Ky. Acts ch. 73 § 1(8)(b) (“Notwithstanding KRS 61.826, a public agency may conduct any meeting, including its regular meeting, by live audio or live video teleconference during the period of the state of emergency.”). But a public agency relying on the provisions of SB 150 must actually “conduct” its meeting by video teleconferencing or by live audio. Of course, a “video teleconference,” under the Act is “one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.” KRS 61.805(5).

Here, the County provided notice that it would conduct its meeting by video teleconference. But it did not conduct its meeting by video teleconference. Instead, it held an in-person meeting. None of its members appeared by “video teleconference” because the entirety of the meeting was conducted in one location with all members present. Thus, SB 150 has no application here. Instead, the traditional requirements of the Act apply. And for a meeting conducted under the Act, KRS 61.840 requires that “[a]ll agencies shall provide meeting room conditions, including adequate space, seating, and acoustics, which insofar as is feasible allow effective public observation of the public meeting.”¹ The public agency must also “permit news media coverage[.]” *Id.* Having elected not to conduct its meeting using video teleconferencing under Senate Bill 150, the County was required to provide adequate space for members of the public, and media, to observe the in-person meeting being conducted. By removing a member of the media from the in-person meeting, the County violated the Act.

¹ This is not to say that a public agency must allow access to the meeting location to every individual who desires to attend the meeting in person. As previously explained by this Office, the Open Meetings Act requires “adequate space [and] seating” so far “as is feasible.” See OAG 20-05 (superseded in part by SB 150). Under the current state of emergency and prevailing health and safety guidance, such as distancing from others by at least six feet, it may not be feasible (or safe) to allow access to every person wishing to attend a meeting when proper spacing is not possible.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.846(4) and KRS 61.848. Pursuant to KRS 61.846(5), 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.

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