

City of Columbia

Municipal Building
116 Campbellsville Street

Phone 270-384-2501
Columbia, Ky. 42728

On January 23, 2018, Adam Capps, Assistant Editor, The Adair County Community Voice (Appellant), sent a letter to Mayor Curtis Hardwick, City of Columbia, to complain that the Columbia City Council had failed to comply with the Open Meetings Act during its January 18, 2018, meeting when the Council went into closed session. After the response from the Mayor was deemed inadequate per Capps, he filed a Complaint with the Attorney General's Office alleging that the Open Meetings Act was violated. On February 14, 2018, the Office of Attorney reasoned that:

Prior to going into closed session during our city council meeting on January 18, 2018, the City of Columbia violated KRS 61.815(1)(a) by failing to give notice of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session.

18-OMD-033, p. 1. Further, the Attorney General's Office went onto to explain KRS 61.815(1)(a) and the purpose behind that law as well as the Open Meetings Act:

The express purpose of this, as well as the other provisions of the Open Meetings Act, "is to maximize notice of public meetings and actions [and t]he 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, 922 (Ky. 1997). With specific reference to KRS 61.815(1) the Supreme Court declared that prior to going into closed session, "the public agency must state the specific exception contained in the statute which it relied upon/" and give "specific and complete notification ... of any and all topics which are to be discussed during the closed meeting." *Id.* at 924 (emphasis added).

In view of the disparate nature of the thirteen exceptions included in KRS 61.810(1), there can be no bright line test for determining if specific and complete notification has been given. However, consistent with the right of the people to "remain[] informed so that they retain control over the instruments they have created" (1974 HB 100, Preamble), the notification, given in the open meeting, must include a statement of the exception authorizing the closed session, the reason for the closed session, and "a description of the business to be discussed couched in sufficiently specific terms to enable the public to assess the propriety of the agency's actions." 00-OMD-64. (Emphasis added).

18-OMD-033, p. 3-4. Finally, the Attorney General's Office provided the following explanation, which while vague, provides the standard that the City of Columbia must meet when explaining their reasoning for closed sessions prior to entering the closed session:

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As this office has observed, "[T]he Open Meetings Act, and in particular KRS 61.815(1)(a), contemplates more than agency recitation of the language of the exception authorizing the closed session, but less than a detailed description of the matter to be discussed" so as to avoid defeating the purpose which necessitated the closed sessions.

18-OMD-033, p. 4-5. So, in a nutshell, the City of Columbia did not provide the specific exception of KRS 61.810 which allowed them to go into closed session and did not adequately explain what was to be discussed and why the City needed to use a closed session.

In response, the City of Columbia would like to commend Adam Capps of the Adair County Community Voice as his actions in this matter has brought to the surface an issue that the City of Columbia was not aware existed. In fact, the procedure used to go into the closed session was one that had been employed by the City of Columbia for numerous years prior to this instance. The City of Columbia would like to sincerely apologize to all of our citizens and take responsibility for our actions. As a result, from this point forward, the City of Columbia promises to do the following with regards to closed, non-public meetings:

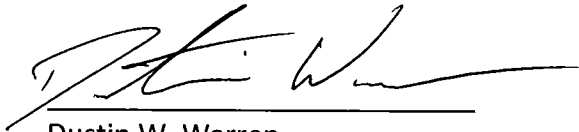
1. State the specific KRS 61.810 exception that permits the closed, non-public meeting on the agenda and provide this to the public at least 48 hours prior to the time of the meeting;
2. Provide the requisite information granting the closed, non-public meeting orally during open meeting; AND
3. Answer any questions that may arise before voting to go into closed session within the guidelines of the law and to best meet the requirements set forth by the Attorney General's Office.

As all of you can see from the Attorney General's response, executive sessions present a unique issue as merely providing the statutory exception authorizing the session is not enough. However, the City must not give too much information as to eliminate the reason for going into a closed, executive session. While the City of Columbia agrees to change our ways, please realize that in no way are we trying to keep any information from the public. Instead, closed sessions are designed to protect the individual, employee, student, company, etc. from receiving unnecessary scrutiny. In fact, if any action is agreed to be taken during closed session then it will be made public after that has been conducted.

In essence, the closed session conducted in January by the City of Columbia, was like the meeting of a disciplinary board, who collectively decided that no punishment should be taken. The City attempted to explain this prior to the meeting and even provide more than what was required under KRS 61.810, but unfortunately was unsuccessful. Once again, we admit that our procedure used on January 18, 2018 was incorrect and apologize for doing so. The council for the City of Columbia is made up of hard working individuals who attempt to do their best in all facets of their positions. They are human. They are not perfect. Therefore, they make mistakes.

But in doing so, we once again commend Adam Capps and the Adair Community Voice because without your actions, we would not be given the opportunity to grow and adapt.

Sincerely,

A handwritten signature in black ink, appearing to read "Dustin W. Warren", written over a horizontal line.

Dustin W. Warren
City of Columbia Attorney