

June 25, 2012

Hon. James Herrick
Attorney General's Office
700 Capitol Avenue
Frankfort, Ky. 40601

Ref: Open Meetings Act Appeal log number 2012-00222

Dear Mr. Herrick:

On Saturday, June 23, 2012 the Appellant received a copy of correspondence dated 6-21-12 that Bardstown's City Attorney, Tom Donan, sent to your office in response to log No. 2012-00222

One of the attachments is a copy of the Appellee's minutes of January 24, 2012, which is also an exhibit that the Appellant sent with the appeal.

You will notice that the Appellee's minutes are devoid of any discussion about any dilemma, any fire fighter "election," or that the fire department elected a new **fire chief** in regards to the January 16th election, or any mention of an "ambiguous **ordinance**," or need for the **amendment** of any of **Bardstown's Code of Ordinances** particularly **Chapter 36** PRIOR (emphasis) to going into **closed session**. In fact none of the activity City Attorney Tom Donan mentioned in the Appellee's "background" and/or "introduction" can be found in the Appellee's minutes!

The minutes are totally devoid of any discussion concerning any of the above mentioned subjects. Why, because **none** of the above were ever discussed in any open session between the date of the aforementioned election and the Appellee's January 24th 2012 City Council meeting.

Yet, you will notice on page 3 of the abovementioned minutes of the Appellee that immediately upon coming out of "executive session" there is a special meeting announcement for the first reading of an ordinance. In that special meeting announcement "is an **amendment to Chapter 36** of the **Bardstown Code of Ordinances**, regarding the **selection, appointment, or hiring of a Bardstown Fire Chief** promulgated in violation of KRS 61.815 (1)(d) and KRS 61.810 (1).

Mr. Donan wants to circumvent the relevant issues brought up in the Appellant's open meetings appeal in his "Introduction" and bring up the non-issue of "members," he questions who are members? The issue of "members" is a moot point since Mayor Sheckles chose as his subject of exceptions of the Act in 61.810(1)(f) as "an **individual employee**" instead of "members" and "members" are not an issue the Appellant brought up in the appeal before the Attorney General.

The appeal does **not** contain any issue as to what constitutes a "member," the issues of the appeal are the Appellee **failed to answer the complaint**, and the actions of the Appellee going **illegally into closed session**, quoting **ALL three exceptions** of the section (1) subsection (f) of KRS 61.810 instead of specifying **ONE** exception. The issue before the Attorney General as it relates to violations of the Open Meetings Act are the **discussing of matters in closed session not discussed in the open session**, as Mr. Donan puts it as "*matters extraneous* to the announced purpose of the closed meeting." These "**matters extraneous**" being violations of KRS 61.815(1)(d) and KRS 61.810(1) are the discussing of and the subsequent *amending* of the "ambiguous ordinance" Mayor Sheckles brought forth in his Jan. 25, 2012 E-mail citing his **reasons** to Anthony Mattingly and Marlin Howard for going into **executive session** on the night

of January 24, 2012, and to **inform** the councilmen illegally in closed session about the “*situation down at the fire station*”, in direct contradiction to KRS 61.810(1).

Since the “*matters extraneous*” were not brought up in open session, they can’t be brought up and discussed in closed session. KRS 61.815(1) (d), and since those “*matters extraneous*” are not allowed to be discussed in closed session since they aren’t an exception to the Act, they violated KRS 61.810(1).

Mr. Donan mentions the Mayor’s “dilemma”, which is one of his own doing and devise since he never followed the mayoral mandates found in the ordinance. Mayor Sheckles didn’t discuss his “*dilemma*” in open session where the public could hear it, so he couldn’t discuss and act out his “*dilemma*” in a closed secret session where his only audience was the City Council. (KRS 61.815(1)(d). Since discussing “dilemma” is not an exception to the Act to be discussed in closed session in the KRS cited by Mayor Sheckles, then KRS 61.810(1) was also violated.

Mr. Donan and the City Council are stuck to what the minutes reflect. If the minutes aren’t accurate then why would the Appellee vote to approve them, and furnish your office with a copy?

Since the minutes reflect that there were **NO** prior **discussions** of the abovementioned in open session as per the total lack of any mention in the **minutes** thereto, and the Appellee having refused to furnish an official copy of the meeting’s audio, stating it was a “*not available record*” as found on page 4 of 12-ORD-105, and since the Appellee **failed** to furnish in their June 21st response attachments to the Appellant and the Office of the Attorney General the official CD of the Appellee’s 1-24-12 meeting, we have only the Appellee’s minutes to rely on.

So what do the minute’s furnished by City Attorney Tom Donan say about the Jan. 24, 2012 meeting compared to the Appellee’s “Background” and “Introduction” in their “response?” There was **NOTHING** about a fire fighter election in the Appellee’s minutes, **NOTHING** about who won the election, **NOTHING** about Bardstown Fire Dept. (BFD), **NOTHING** about “members.” **NOTHING** about Bardstown/Nelson County Volunteer Fire Dept. (BNCVFD), **NOTHING** about Anthony Mattingly, **NOTHING** about Marlin Howard, **NOTHING** about a “*situation down at the fire station*,” **NOTHING** about an “*ambiguous ordinance*”, **NOTHING** about a need for amending or promulgating any ordinance in Bardstown’s Code of Ordinance, specifically one in **Chapter 36**. The minutes are **mute** on all the abovementioned subjects!

If the minutes don’t reflect discussion of any of the above in **open session**, then how can any of the above be discussed in closed session? They can’t legally via the Open Meetings Act’s KRS 61.815(1) (d). But if Mr. Donan’s assertions were to be believed, these “*matters extraneous*” mentioned above are integral and “appropriate” to the Appellee’s response No. 3, including the need to go into a closed session to discuss the “dilemma” of having an “ambiguous”... existing Ordinance... and “**potential amendments** (emphasis Appellant) in the “**existing Ordinance**” (emphasis Appellant) _ to **attempt to remedy** (emphasis Appellant) the **appointment-dismissal dilemma**” (emphasis Appellant) as it related to Mayor Sheckles citing KRS 61.810(1)(f).

These “*matters extraneous*” discussed in closed session on 1-24-12 are one and the same as stated by Mayor Sheckles in his e-mail to Anthony Mattingly and Marlin Howard, that is an exhibit provided by the Appellant, and discussing them in closed session violated both KRS 61.810(1) and KRS 61.815(1) (d)

Just what does the Appellee’s minutes SAY! They are totally silent on the above mentioned “*matters extraneous*” BUT on page 3, under “SPECIAL MEETING ANNOUNCEMENT” we

see immediately coming out of a CLOSED SESSION: “to present a first reading of Ordinance No. 2012-01, which is an amendment to Chapter 36 of the Bardstown Code of Ordinances regarding the selection, appointment or hiring of a Bardstown Fire Chief”.

How do you have a “first reading” of an ordinance if there are no records of ever having any discussion or vote regarding amending said ordinance? Via City Attorney Tom Donan’s “*matters extraneous*” found and expounded on in the Appellee’s response NO. 3, while in closed session that’s how! A clear violation of KRS 61.810(1)

Since a public agency “*speaks through their minutes*” just what is the REASON (emphasis) quoted in open session on January 24, 2012 to satisfy KRS 61.815(1) (a)? The Appellant sees NO reason cited by Mayor Sheckles for a need to go into closed session in the minutes furnished by the Appellee, because the Appellee cited no reason in open session, for their need to go into closed session! A violation of KRS 61.815(1)(a)

Since an agency “*speaks through their minutes*” just what is the GENERAL NATURE OF THE BUSINESS quoted in open session to satisfy KRS 61.815(1) (a) Mayor Sheckles says via the minutes that they are going to discuss “an individual employee.” At this point the Appellant admits there is no problem, but Mayor Sheckles then states via the minutes, by reading all the exceptions, that are going to be discussing the appointing of that individual employee, they are going to discussing disciplining that individual employee, and then they are going to discussing dismissing that individual employee. Of course it doesn’t make any sense to discuss ALL 3 actions to “an individual employee” at the same time! A violation of KRS 61.815(1)(a) see 97-OMD-110.

The real truth comes out as to what the real general nature of the business was per Mayor Sheckles e-mail. That was to inform his councilmen of the “*situation down at the fire station*”, and talk about the “ambiguous ordinance”, which was more than just talked about! It was acted upon when it was amended in closed session! The first thing out of Mayor Sheckles mouth as per the minutes furnished, immediately upon coming out of closed session was an announcement of a special meeting, to be held on Jan. 26, 2012 for the FIRST READING of Ordinance 2012-001. The only problem is the minutes are totally devoid of any discussion and vote to amend any Chapter 36 ordinance prior to going into closed session! A little over 2 hours in closed session and the Appellee emerges out into regular open session and we not only have a legal work product ready for a “first reading”, its been given a title of B2012-001! A simple explanation is that the amended ordinance is one of City Attorney Tom Donan’s “*matters extraneous*” if one was to believe the Appellee’s response No. 3.

The public in attendance at the January 24, 2012 meeting wouldn’t have a clue as to what the general nature of the business was, or for what reason the mayor needed to discuss this business in secret with the City Council.

In Mr. Donan’s “response” he has so graciously provided an OMD in an attempt to back up his assertion that the minutes speak for themselves that the Mayor “complied with the requirement.” This being 97-OMD-110.

97-OMD-110 doesn’t help Mr. Donan or his client the Bardstown City Council; in fact it destroys any defense theory that Mayor Sheckles “*complied with the requirement*.” In his haste to quote the Attorney General’s decision in 97-OMD-110 Mr. Donan apparently failed to read ALL of the decision, which says in part: ...” KRS 61.810(1) (f) permits a public agency to go into a closed session relative to”... “Prior (emphasis Appellant) to going into a closed session for

one (emphasis Appellant) of the **specific purposes** (emphasis Appellant) authorized by KRS 61.810(1) (f), a public agency must state during the regular and open portion of the meeting the general nature of the business to be discussed and the **reason** for the closed session. While the public need not be advised as to the name of the specific person being discussed in connection with a possible appointment, dismissal, or disciplinary action, the public is **entitled** to know the **general nature of the discussion** which would be that it involves **either** (emphasis Appellant) a *possible appointment*, a *possible dismissal*, or a *possible disciplinary matter* relative to a specific unnamed person or persons”.. .

“Since the only personnel matters which can be discussed in a closed session pertain to the possible appointment, discipline, or dismissal of personnel of that particular agency, the *public agency* should have indicated **which** (emphasis) of those **particular authorized exceptions** (emphasis Appellant) it was utilizing and **why** (emphasis Appellant) the session was being closed (which frequently involves privacy considerations)”.

The only “matters” that could have been discussed in the secret closed session were “personnel matters,” and then only to the extent of being an appointment, **OR** discipline, **OR** dismissal of a student, **or** member, **or** as is the case at hand an employee. The Act makes NO exceptions for “*matters extraneous*” in fact it prohibits any matters if they are **not** brought up in open session, they **can’t** be discussed in closed session.

How the Appellee can amend an ordinance in closed session, being referred to as “*matters extraneous*” in relationship to KRS 61.810(1)(f) in appointing **or** disciplining, **or** dismissing an employee is beyond ludicrous when the actions of the Appellee violate KRS 61.815(1)(a), KRS 61.815(1)(d) and KRS 61.815(1).

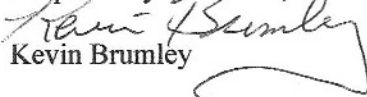
How the Appellee can reply in their response No.1, and state the “minutes” will reflect the “**specific reason**” to go into closed session is equally ludicrous, when **no REASON** was cited in the minutes! The reason has to be stated in open session PRIOR to going into closed session. No exceptions, the Appellee’s action of going into closed session without stating a **reason** is a violation of KRS 61.815(1)(a) See 97-OMD-110

How the Appellee can state in their response No.2, with a straight face that the “*minutes speak for themselves that the Mayor complied with the requirement*”, is off the whimsical chart. One thing about it is the total **lack** of minutes reflecting the introduction, promulgation, and vote for amending an ordinance in open session by the legislative body, the minutes certainly do “speak for themselves.”

The minutes provided certainly do “speak for themselves” showing that no specific action, the general nature of the business to be discussed in closed session required by KRS 61.815(1)(a) (appointment) **or** (dismissal) **or** (discipline) was ever cited by Mayor Sheckles in the **open session** PRIOR to going into closed session. Mayor Sheckles reading into the records **all** the exceptions found in KRS 61.810(1) (f) does not state a general nature of the business.

For all the abovementioned reasons the Appellee violated the Open Meetings Act.

Respectfully submitted,


Kevin Brumley

Enclosure: Thomas A. Donan