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June 21, 2012

**VIA U.S. MAIL AND  
FACSIMILE TO 502-564-6801**

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

Re: City of Bardstown Response to Open Meetings Appeal Filed by Kevin Brumley  
Dated June 11, 2012 filed on June 14, 2012: Log Number 2012-00222

Dear Mr. Herrick:

I am submitting the following information in response to the Open Meetings Appeal of Kevin Brumley dated June 11, 2012 which was received by your office on June 14, 2012:

**BACKGROUND**

As noted in Mr. Brumley's letter, this Complaint is a sequel to 12-ORD-105 and 12-OMD-080. There are two (2) different entities referenced in this Appeal. One entity is the Bardstown Fire Department (BFD) which is operated by the City of Bardstown. The other entity is the Bardstown-Nelson County Volunteer Fire Department, Inc (BNCVFD). It is a non-profit corporation which serves an unincorporated area of Nelson County, Kentucky. The 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.

**INTRODUCTION**

Prior to the election held by the BNCVFD on January 16, 2012, Anthony Mattingly was serving as Chief of the BFD and the BNCVFD. Mr. Mattingly was a long time employee of the City of Bardstown and was paid based on his position as the Chief of the BFD. Arguably, the Ordinance in effect at the time of the election had the effect of appointing a different employee, Marlin Howard, as the Chief of the Bardstown Fire Department and dismissing Anthony Mattingly as the Chief of the BFD. Both Marlin Howard and Anthony Mattingly were long time employees of the City of Bardstown Fire Department. The next issue related to both employee's positions is who are the

“members” of the Bardstown Fire Department. Are “members” only City employees or are volunteers included in that phrase? Volunteer firefighters are clearly members of the BNCVFD and they voted on January 16. A copy of City Ordinance Chapter 36 relating to the Fire Department is attached. The “election” of January 16, 2012 consisted of members of the BNCVFD, including volunteer fire fighters. The City of Bardstown has a contract with the BNCBFD relating to use of City property and facilities by the BNCVFD and the employment by the City of Bardstown of additional paid fire fighters in exchange for funds contributed by the BNCVFD.

The alleged infractions complained of by Mr. Brumley relate to the January 24, 2012 regular meeting of the Bardstown City Council. The Attorney General allowed me until June 21, 2012 to respond.

The Complaint centers around KRS 61.810 (1) (f) and 61.815 which are set forth below:

#### 61.810 Exceptions to open meetings

(1) All meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times, except for the following:

- (a) Deliberations for decisions of the Kentucky Parole Board;
- (b) Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency;
- (c) Discussions of proposed or pending litigation against or on behalf of the public agency;
- (d) Grand and petit jury sessions;
- (e) Collective bargaining negotiations between public employers and their employees or their representatives;
- (f) 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;**

#### 61.815 Requirements for conducting closed sessions

(1) Except as provided in subsection (2) of this section, the following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:

- (a) Notice shall be given in regular open meeting 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;**
- (b) Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session;
- (c) No final action may be taken at a closed session; and
- (d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.

Each of Mr. Brumley's Complaints are addressed below:

RESPONSE

1. FAILURE TO ANNOUNCE THE SPECIFIC "REASON" TO GO INTO A CLOSED SESSION.: Attached are the minutes of the meeting of January 24. They reflect that the specific reason for going into closed session was announced as required by the Statute. It is not necessary to name the persons who might be subject to appointment, discipline, or dismissal, just the general nature of the business to be discussed.
2. ALLEGED FAILURE TO STATE "GENERAL NATURE OF THE BUSINESS": The minutes speak for themselves that the Mayor complied with the requirement. See 97-OMD-110.
3. ALLEGED DISCUSSION OF MATTERS EXTRANEIOUS TO THE ANNOUNCED PURPOSE OF THE CLOSED MEETING: Mr. Brumley claims that Mayor Sheckles violated the requirements for a closed meeting by providing background to the City Council about circumstances leading to the possible appointment or dismissal of an individual employee. Any discussion by the Mayor along these lines was appropriate so the City Council would be fully aware of the background leading up to the Mayor's dilemma in light of the ambiguous then existing Ordinance and potential amendments in the existing Ordinance to attempt to remedy the appointment-dismissal dilemma for the current Chief. The key to resolution of this Complaint is that the discussion did relate to the possible appointment or dismissal of an individual employee and that no final action was taken concerning those matters.
4. ALLEGED VIOLATION OF KRS 61.810 (1) (f): This is a rehash of Complaint No. 2. Decisions indicate that public body cannot go in to closed session to discuss "personnel matters". The City Council records reflect that the statute and the language of the statutory exception were stated during the Open Meeting in the Motion to go into Closed Session. The City Council voted to go into Closed Session citing the statutory language found in KRS 61.810 (1) (f). In short, the Council complied with the requirements of the statute.

Respectfully submitted,



THOMAS A. DONAN  
ATTORNEY FOR CITY OF BARDSTOWN

Enclosures

cc: Mr. Kevin Brumley  
Ms. Bobbe Blincoe, City Clerk