



WPSD Television
100 Television Lane
P. O. Box 1197
Paducah, KY 42003

February 9, 2022

Mark C. Whitlow
Chairman
Paducah-McCracken County
Convention Center Corporation
415 Park Avenue
Paducah, Kentucky 42001

Re: Open Meeting Act violation on January 24, 2022

Dear Chairman Whitlow,

Thank you for the follow up letter to my phone call of January 31, 2022. As provided by KRS 61.800 to 61.850, I am submitting this letter as a written complaint that an executive session of the Paducah-McCracken County Convention Center Corporation Board violated the Open Meetings Act at the virtual meeting of January 24, 2022. The violations occurred both during the public session and in entering executive session.

1. You did not provide notice of the general nature of the business to be discussed, the reason for the closed session and the specific provision (exemption) authorizing the session.
2. The Open Meetings Act forbids discussion of matters unrelated to the stated purpose for entering the meeting.
3. Upon entering executive session you ordered disconnection of the news media with no provision made for access to your return to public session.
4. The open portion of the meeting was significantly flawed by technical problems in violation of KRS 61.826 which requires "any interruption in the video or audio broadcast of a video teleconference at any location shall result in the suspension of the video teleconference until the broadcast is restored." The problems persisted throughout the public session.

The first indication of an executive session came when you called on PMCCCC Executive Director Michelle Campbell for her director's report.

Campbell: "Oh, um, for this meeting, it's, we're primarily focused on AQS (American Quilters Society). We're getting ready for the quilt show, um, and..."

She is interrupted by board member Bill Bartleman, also a McCracken County Commissioner.

Bartlesman: “Michelle, I, I, wonder if we ought to discuss that in, uh, executive session cause it involves a contract...

Campbell: “ok”

Bartlesman: “and possible negotiation.”

I told you during our phone call you appeared to me to be a bit surprised, as if Bartleman had just sprung an executive session on you. You responded to me after a brief pause, “well, he did.”

Later, when you called for executive session you asked for a motion to discuss “litigation and contracts.”

Attorney General Cameron has provided guidance to public officials that the courts have stated public agencies must give “specific and complete notification in the open meeting of any and all topics which are to be discussed during the closed meeting.” The Attorney General has stated that “notification must include both a statement of the exception authorizing 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. The courts have stated that the exception for proposed or pending litigation applies to “matters inherent to litigation, such as preparation, strategy, or tactics, but not just when an attorney is present.”

I appreciate the candor you expressed in your letter to me in which you stated, “First, I agree with you that certain portions of the closed session discussion at the January 24, 2022 meeting should have been held in open session. In my opinion, some of the discussion in closed session related to potential litigation and was appropriate for closed session. However, a portion of that discussion should have been held in open session as it related to matters which are not exempt from the open meeting requirement. In particular, discussions regarding communications with city leaders about assistance with the dome pavilion should have been held in open session. I regret the error and will be more cognizant in the future to avoid any repetition of it.”

While I appreciate the candor I do not believe what is, in essence, a pledge to be better is sufficient remedy.

As you very well know the Quilt Show is a potent political topic. The decision of the City to cease providing labor and assumption of thousands of dollars in expense to erect the portable “Dome” played no small part in this matter. The Convention Center Corporation has a contract to provide the Dome for the AQS event. The Dome provides another roughly 37,000 square feet of exhibition space. At the time of the meeting it appeared that cost would fall to the PMCCCC.

This matter is a public policy issue.

The City had removed funding the Dome from the current City budget. Your board did not budget for it. The City claimed the former City Manager sent a letter to the Convention Center last May stating its intention. They have produced that letter. Your

organization claimed no letter was received. As the cost to erect and later dismantle the dome is said to be \$20,000 plus for each action, the Convention Center Corporation would ostensibly face an additional significant cost for an event that already creates a negative return for the Convention Center.

It certainly remains unclear what was discussed in the executive session. "A contract" and "possible negotiation" as Mr. Bartleman stated or "litigation and contracts (plural)" as you stated. Which contract? More than one contract? Litigation? Current or potential? The public, the interests of which you are supposed to serve, is left to wonder about what the board was talking, considering or planning? A potential suit against the city? Negotiation with AQS about some relief from the contractual dome obligation? "Could they sue us if we don't put up the dome?" "Why can't we just leave it up?"

The public session was plagued by technical problems.

Mr. Pea joined the meeting late and apparently could never be heard. At one point, during a conversation about staffing, a chat message from him appeared on the screen. "Apparently, I can't be heard. I wanted to know if another part-time bar tender could be considered for an event," it read.

Mr. Mann had connection problems and was frequently not visible, apparently finally abandoning the video link and connecting by phone. He is heard to say, "can anybody hear me?" After an affirmative response he talks for some time. He mentions the executive session coming up in comments he makes about the cost of putting up and taking down the dome.

The meeting should have been promptly suspended when the problems surface. (This is the context for the short comment on the phone I made about the vote for executive session. I am fully aware that a roll call is not required. I questioned whether you could determine who voted how, since you couldn't hear one board member or see another. A roll call would have eliminated the confusion I, at least, certainly experienced).

The remedy for resolution of the violations is pretty simple.

1. Within thirty (30) days repeat this meeting correctly including the "director's report" as it would have been given if Mr. Bartleman had not improperly interrupted Ms Campbell.
2. Acknowledge in the notice of meeting and during the subsequent meeting, that a violation of the Open Meetings Act occurred at the January 24, 2022 meeting. You should outline the specifics of how the law was violated and steps that will be taken to ensure future compliance. Please include your plan for media presence upon the return from executive to public session going forward.
3. Fully disclose to the best of each board members memory, each and every item discussed in the executive session and what was said by each board member.
4. Each board member and your legal counsel should undergo mandatory training in the requirements of the Kentucky Open Meetings Act and the Kentucky Open Records Act. (This training is available from the non-partisan Kentucky Open Government Coalition in Frankfort, among others).
5. Notify the public when and where the training will take place. Allow public attendance at the training, including media coverage.

6. In conformity with KRS 15.257, confirm compliance, by the appropriate persons, with the Attorney General's request for "Certificate of Receipt or Distribution" of the publications "The Kentucky Open Records & Open Meeting Acts: A guide for the Public and Public Agencies" and "Managing Government Records: A Cooperative Undertaking". Compliance may be proved by providing WPSD with a copy of each person's certificate.

It is deeply troubling when any public official or body demonstrates a default position of conducting public business in private. A spur of the minute decision by a single board member, apparently without discussion with the chair, leads to a private discussion about the public's business. That is not acceptable. Nor is continuing a board meeting when one member literally could not be heard and therefore could not fully participate and one member could not be seen.

We look forward to a quick resolution of the matter.

Sincerely,

A handwritten signature in black ink that reads "Perry Boxx". The signature is written in a cursive style with a large, stylized initial "P".

Perry Boxx
News Director
WPSD Local 6