

Brandi Harless, Mayor
City of Paducah

Jim Arndt, City Manager
City of Paducah

August 7, 2020

Dear Mayor Harless and Mr. Arndt,

This letter is written in compliance with KRS 61.846 (1). WPSD believes the City Commission on July 28, 2020 violated the Open Meetings Act, specifically KRS 61.826 (4). The Act states, "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."

During the meeting of July 28, 2020, not only did repeated interruptions occur throughout the more than two and a half hour meeting, the Mayor acknowledged "Unfortunately the YouTube live stream is not working correctly, but we are recording the meeting so anyone can watch this afterward."

The Mayor proceeds with the meeting directing the roll call which reveals that the connection of Commissioner McElroy has been interrupted. Approximately one minute and forty five seconds in to the "meeting" (1:45) the unseen City Clerk says there are technical issues. An unidentified and unseen male voice is heard to speculate that McElroy has been "kicked off. There ensues a discussion during which Commissioner Abraham also requests the microphone of the Mayor to be turned up. She removes a pair of ear buds and tries unsuccessfully to speak to McElroy. She suggests McElroy call in by telephone. At 3:40 in to the meeting the Mayor states "I'm going to move forward while you are figuring that out."

Commissioner Watkins offers the invocation.

At 4:47 in to the meeting, an unseen and unidentified voice is heard to say the Mayor is now live on You Tube. She acknowledges the interruption with McElroy continues. She still cannot hear McElroy.

The Mayor then calls on the unseen City Manager for any agenda additions or deletions. A male voice assumed to be City Manager Arndt replies there are none.

At 6:17 in to the meeting the Mayor says McElroy has a motion to make. Since she clearly cannot read it, the Clerk reads the motion to suspend the rules and change the order of the agenda. The Mayor moves the motion. Commissioner Wilson seconds. On roll call, McElroy is visible moving her lips, unheard, then makes a thumbs up motion. All other commissioners are heard and seen to vote in the affirmative. The Mayor does not state the outcome of the vote. She proceeds, asking the Clerk to "double-check me tonight. There's a lot going on."

Mayor Harless calls on Commissioner Abraham for his comments on the Lose Agreement. The commissioner speaks from 7:57 to 8:14. During this period Abraham is the only Commissioner seen. No one viewing the feed, such as it is, can see anyone else. The reactions of the Mayor and other Commissioners is private and unseen. The viewing audience cannot actually view the commission. This pattern continues throughout the entire period of the meeting.

Commissioner McElroy is finally heard at 13:02, after Abraham has concluded his remarks, saying “I can hear you now. I don’t think you can see me but I can hear you.” The Mayor responds, “Excellent.”

Discussion of the technical issues continues. Again, McElroy is heard to say, “Can you hear me? Can you hear me?” The Mayor replies, “yes we can.” Commissioner Abraham replies, “barely.”

The Mayor suggests McElroy is sending two audio streams. There are feedback and distortion sounds.

At 14:11 McElroy says, “Now you can hear me. Now you can hear me.” The Mayor says “yes” and suggests McElroy hang up the phone.

Then McElroy speculates, “the problem is the number of people logged on,” and the Mayor agrees. Abraham is asked to read the motion he spoke in support of earlier. He asks if he is going to be able to repeat his comments. McElroy then says, “I heard you” and the Mayor repeats this. This exchange takes place at 15:05. McElroy had earlier said she could hear the proceedings at 13:02, which was after Abraham had concluded his remarks.

Finally at 17:20 in to the meeting McElroy can be both seen and heard.

However, the rest of the broadcast continues to be plagued by interruptions in the presence of participants and other technical glitches.

Any reasonable person viewing this event cannot help but believe it failed to allow the citizens of this community the responsible governance and access to the public’s business to which they are entitled.

The Attorney General issued guidance on public meetings during this pandemic in his order of March 18, 2020, OAG-20-05.

“The fact that a worldwide pandemic caused by a highly contagious infectious disease makes a physical meeting location for the public infeasible does not mean that an otherwise open meeting can be conducted in executive or closed session. For that reason, an agency for which it is not feasible to provide the specific conditions set forth in KRS 61.840 should “precisely identify” the website, television station, or other technological means by which members of the public may access “the video teleconference where all members can be seen and heard.”⁹ KRS 61.826(2)(b). Any agency proceeding in this manner should consider and make available technological means that permit the public to observe what remains an “open meeting” under the Act unless there is a specific exception for closing the meeting or portion thereof. See

KRS 61.810 (providing specific exceptions to the open meeting requirements that are strictly construed under KRS 61.800). (Emphasis is mine).

The order reminded public agencies, “a public agency conducting any meeting through a video teleconference must, under the express provisions of the Act, suspend the video teleconference in the event of “[a]ny interruption in the video or audio broadcast.” KRS 61.826(4). Thus, if the “video or audio broadcast” is interrupted for any reason, the meeting must stop until the “broadcast” is restored...COVID-19 has created extraordinary circumstances. Yet neither we nor any public agency is at liberty to add to or subtract from the statute based on our perceived wisdom, thereby substituting it for the text that the General Assembly adopted on behalf of the people.”

The City at some expense has provided separating glass between Commissioner locations in chambers. It has previously met in that location limiting public attendance. It did so in the meeting prior to this one. The City has offered no reason it could not have done the same on July 28.

I raised my concerns about the July 28th meeting in a phone call with Mr. Arndt on Wednesday. Here is his recent email to me:

“Perry

I know you expressed a lot of thoughtful concerns to me yesterday afternoon. I promised to check into your concerns with the Attorney General’s Office. I shared your concerns with Lindsay Parish yesterday afternoon and she reached out to the AG first thing this morning. We, like you, want to be sure we are doing things in the best interests of our City. As I mentioned yesterday, we are going to ramp up our efforts to achieve a better technological virtual presence for our next meeting. We will be switching to the Zoom format from the Start Meeting format, that we have been using since early April.

Thank you for your service to our community. Please see a summation of the conversation with the AG below:

From: Lindsay Parish
Sent: Thursday, August 6, 2020 9:55 AM
To: James Arndt <jarndt@paducahky.gov>
Cc: Michelle Smolen <msmolen@paducahky.gov>; Claudia Meeks <cmeeks@paducahky.gov>
Subject: Attorney General Response

Good Morning City Manager,

In response to the concerns raised by Mr. Boxx, I spoke with Chaz English in the Attorney General’s Office. I asked 2 questions:

1. During our last Commission meeting, we had 3 ways for the public to access our Commission meeting. Through our Government Access Channel, through our Youtube Live Stream and by joining the virtual meeting if they would like to make public comments. During the meeting, the Youtube Live Stream went down temporarily and the

Commission was unaware that it had gone down so business continued. Was this out of line and does this fail to meet the standards of SB 150?

Answer: An Attorney General Opinion has not been issued on this specific question, however, as long as the meeting is being broadcast and there is some availability for the public to watch it (Government Access Channel), we are in compliance with the law.

2. During our last Commission meeting, one of our Commissioners had technical difficulties and was temporarily only able to access the meeting through audio. No vote was taken during the time which the Commissioner was only able to participate by audio and she was able to regain video access. In this situation, is audio-only attendance acceptable or can she no longer participate in the meeting or cast a vote until video is regained?

Answer: During the Coronavirus pandemic and under SB 150, audio-only access is sufficient to participate in the meeting.

I believe we are in line with the heart and letter of SB150. However, I understand his concerns and hope that the change to Zoom will help with the technical difficulties.

Best Regards,



Lindsay Parish
City Clerk & Director of Customer
Experience
City of Paducah
270-444-8506 ext. 2075
www.paducahky.gov
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Doing**"

The questions the email describes as posed by Ms Parish are not on point to the concerns I raised. They hardly fully describe what transpired during this meeting.

To resolve this complaint, the City must acknowledge that it violated the Open Meetings Act on July 28th and that all action taken at that time must be repeated in a public meeting compliant with the law of the Commonwealth. The City must give the appropriate notice to the public. If the City chooses to conduct the meeting utilizing technology, it must take the steps to ensure it is readily available for the viewing of all citizens, that the broadcast is free of interruption and technical failure, and that the commissioners are all visible to those viewing.

I look forward to your prompt response.

Perry Boxx
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