

THE PIONEER NEWS

AG says court erred over closed session, records request

By Thomas Barr

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FRANKFORT – The state attorney general's office has determined that Bullitt Fiscal Court is guilty of a pair of violations relating to open records and open meetings acts.

The complaint filed by attorney Eric Farris against Bullitt Fiscal Court alleged that actions taken during an executive session on July 16 did not meet the standards to meet behind closed doors.

And he also alleged that the court did not address his open records concerns within the time period allowed.

This is yet another in a line of battles over the past three months between fiscal court and jailer Martha Knox.

Under the complaint filed, Farris alleged that his response to the court's letter seeking information on the purchase of vehicles through its canteen fund was improper.

He alleged that the decision to ask for certain information came following an executive session. He said there was no public discussion and the policy issues had nothing to do with any possible litigation.

One reason allowing a closed session under KRS 61.810(1) is because "specifics at the discussion during executive session cannot be disclosed without the risk of exposing confidential information which could be the subject of litigation."

In the opinion rendered by assistant attorney general Amye Bensenhaver, the county's argument on the validity of the closed session did not constitute matters inherent to litigation.

Since it was a regular fiscal court meeting, Bensenhaver said there was no problem with not having the discussion listed on the agenda.

Farris questioned the validity of the closed session and the resulting action, which included a list of questions seeking answers from the jailer.

In her opinion, Bensenhaver said that fiscal court talked about issues such as the purchase of property from the canteen fund and the need to insure them. Also, the discussions also included information on the operation of the home incarceration program.

"These topics do not constitute 'matters commonly inherent to litigation, such as preparation strategy or tactics,'" she wrote.

"The record on appeal confirms that the threat of litigation was, at best, remote," said Bensenhaver.

She concluded that the open meetings act was violated when it concluded the closed session on July 16. She also opined that the county failed to respond to Farris' letter on July 31 with concerns on the demands made of his client following that meeting.

In its explanation on the complaint, the county said that Farris' letter was not a complaint but only a response to the seeking of information. Bensenhaver said the letter should have been treated as a response to the open records request and was not addressed.

After receiving the opinion last week, Farris said he would ask fiscal court to once again rule the actions in July to be null and void.

He was also concerned with making the home incarceration program resolution be ruled invalid.

In August, the county supported the move of the HIP monitoring system to the sheriff's office.

In the very beginning, Farris said he suggested that Knox and fiscal court sit down and have a reasonable instruction. However, he said it is wrong to have fiscal court try to bully his client.

Farris added his client has asked the department of corrections to assist her with questions over the canteen fund and the Substance Abuse Program (SAP) to make sure she is doing everything properly.

The county can appeal the AG's opinion to circuit court.

County attorney Monica Robinson said she was not comfortable with revealing the nature of every piece of litigation which might be discussed in executive session.

She said there was confusion over Farris' letter and she didn't realize it was a formal complaint. She added the county is still awaiting questions to be answered on the canteen fund.

In talking with the KACO insurance representative, Robinson said she acted on their advice.

A similar complaint has also been filed over the Aug. 6 meeting.

It would be the choice of fiscal court on whether to appeal the attorney general's opinion. Robinson said she really didn't see a need to do so but that would ultimately be the call of the fiscal court members.