

COMMONWEALTH OF KENTUCKY
 BARREN CIRCUIT COURT
 CIVIL ACTION NO. 20-CI-00264

D.T. FROEDGE

PLAINTIFF

v.

MOTION TO STAY

GLASGOW ELECTRIC PLANT BOARD et. al

DEFENDANTS

NOTICE

Notice is given that this Motion on behalf of Defendants Glasgow Electric Plant Board, John M. “Tag” Taylor III, in his capacity as a Member of the Board of the Glasgow Electric Plant Board, and Elizabeth “Libby” Short in her capacity as a Member of the Board of the Glasgow Electric Plant Board will be brought on for hearing in the Barren Circuit Court on Thursday, 6 August 2020 at 8:30 a.m. CDT.

MOTION

The Defendants, Glasgow Electric Plant Board (hereinafter “Glasgow EPB”), John M. “Tag” Taylor III, in his capacity as a Member of the Board of the Glasgow Electric Plant Board, and Elizabeth “Libby” Short in her capacity as a Member of the Board of the Glasgow Electric Plant Board, by counsel, move this Court to stay attempts by Glasgow EPB board member D.T. Froedge to improperly call a special meeting or improperly add agenda items to the Glasgow EPB board meeting, state as follows in support of this Motion:

During the regularly scheduled Glasgow EPB board meeting of 28 July 2020, D.T. Froedge attempted to add two additional items to the agenda that had been previously published in advance of the meeting to all the board members.¹ During the meeting, Mr. Froedge

¹ See Glasgow Electric Plant Board Facebook post of 28 July 2020,

attempted to add two agenda items consisting of (1) election of new officers and (2) reconsideration of external counsel for Glasgow EPB.² Because D.T. Froedje again violated the notice requirements for the additional agenda items, Chairperson Tag Taylor failed to recognize the additions. The meeting could not continue, however, because three of the board members (Froedje, Witcher, and Pritchard) refused to approve the properly-noticed agenda and to go forward with the meeting; Chairperson Taylor adjourned the meeting.³

During the meeting, there was a lengthy discussion regarding an opinion from the Kentucky League of Cities⁴ referencing OAG 20-05 that was initially brought up by Secretary/Treasurer Libby Short. Attached to this Motion is OAG 20-05 that was drafted on 18 March 2020 in response to a request for an opinion as to whether a public agency must identify a primary physical location for a video conference at which the public may attend and view a public meeting conducted through video conference under the Open Meetings Act. A Kentucky League of Cities opinion referenced that OAG opinion but along with that provided municipalities and public agencies guidance as to how to conduct public meetings during a pandemic.⁵

The issue before the Court is whether Froedje properly added agenda items to a video conference public hearing contemporaneous with conducting the hearing without advanced notice. To fully understand the rationale for the Kentucky League of Cities opinion regarding public agency meetings, one must look at the Open Meetings statute beginning with KRS § 61.800 which provides the legislative policy as follows:

<https://www.facebook.com/search/top?q=glasgow%20electric%20plant%20board> video link to meeting
<https://www.youtube.com/watch?v=C09QbgmNdC0&feature=youtu.be>

² The undersigned firm was hired by Glasgow EPB in January 2017 (as reflected in engagement letter and meeting minutes), and there has no contrary board action regarding that retention of outside counsel.

³ Glasgow Electric Plant Board Meeting, 28 July 2020.

⁴ <https://www.klc.org/News/8924/ky-attorney-general-open-meetings-opinion-during-pandemic>

⁵ *Id.*

The general assembly finds and declares that the basic policy of KRS § 61.805 to 61.850 is that **the formation of public policy is public business and shall not be conducted in secret** and the exceptions provided by KRS § 61.810 or otherwise provided for by law shall be strictly construed.

(emphasis added.)

Because of the current pandemic, the Glasgow EPB meeting is being conducted via video conferencing and still must comply with the applicable statutes. Specifically, KRS § 61.826 not only indicates that a public agency may conduct a meeting through video conference but that it must follow certain requirements if that choice is made. According to Subsection 2 of that statute, “[n]otice of a video teleconference shall comply with the requirements of KRS § 61.820 or 61.823 as appropriate. In addition, the notice of a video teleconference shall: (a) clearly state that the meeting will be a video teleconference and (b) precisely identify a primary location of the video teleconference where all members can be seen and heard and the public may attend in accordance with KRS § 61.840.”

The letter referenced as OAG 20-05 in the Kentucky League of Cities opinion indicated that during the COVID-19 pandemic, there would be an exception to providing the physical location of the teleconference. The opinion makes it clear that this is a rare event and takes into account the public health recommendations and mandates provided by the governor of Kentucky, federal government, and other public health bodies.

What is clear is that if a video conference meeting is called, pursuant to KRS § 61.826, then it must comply with the provisions of KRS § 61.823 dealing with special meetings. In KRS § 61.823(4), twenty-four hour notice is required as set forth below:

(4)

(a) As soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to every member of the public agency as well as each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The notice shall

be calculated so that it shall be received at least twenty-four (24) hours before the special meeting. The public agency may periodically, but no more often than once in a calendar year, inform media organizations that they will have to submit a new written request or no longer receive notice of special meetings until a new written request is filed.

Taking into account the interplay of the Open Meetings statutory provisions, SB 150, this Court's recent ruling on 2 July 2020, and admonitions in the recent hearing of 24 July 2020, the efforts of D.T. Froedge to add two additional agenda items contemporaneous with the meeting without twenty-four hours' notice is in clear violation of not only the Open Meetings statutes, but SB 150 and the spirit of trying to keep the public advised of what transpires at open meetings. Again, this is another effort on the part of D.T. Froedge to flout the statute, legislative mandates, and this Court's requirements by pushing through his personal agenda ultimately as to the employment of Superintendent William Ray and the City of Glasgow's continued relationship with TVA.

Lastly, Froedge has requested that notice be sent for a special meeting to be conducted on Monday, 3 August 2020 at 10:00 am CDT to address the same two agenda items set forth above. Mr. Froedge could not wait until the next regular meeting and refuses to comply with the mandates of the applicable statutes, SB 150, and this Court's admonitions.

THEREFORE, The Defendants, Glasgow Electric Plant Board, John M. "Tag" Taylor III, in his capacity as a Member of the Board of the Glasgow Electric Plant Board, and Elizabeth "Libby" Short in her capacity as a Member of the Board of the Glasgow Electric Plant Board respectfully request stay of any further special meetings or improperly noticed agenda items on the part of D.T. Froedge or any other Glasgow EPB board member in violation of the Open Meetings Act, SB 150, and this Court's Order.

CERTIFICATE OF SERVICE

I hereby certify that on the 29thth day of July 2020, I electronically filed the foregoing with the clerk of the court by using the CM-ECF system, which will send a notice of electronic filing and mail or e-mail the foregoing to the following:

Paul T. Lawless
Seth T. Church
Bell, Orr, Ayres & Moore, P.S.C
1010 College Street, PO Box 738
Bowling Green, KY 42102
lawless@boamlaw.com
church@boamlaw.com

Christopher Davenport
Broderick & Davenport, PLLC
921 College Street
P.O. Box 3100
Bowling Green, KY 42102-3100
cdavenport@broderickfirm.com

Tom Kerrick
Matthew Cook
Kerrick Bachert, PSC
1025 State Street
Bowling Green, KY 42102
tkerrick@kerricklaw.com
mcook@kerricklaw.com

COLE & MOORE
921 College Street
P.O. Box 10240
Bowling Green, KY 42102-7240
phone 270-782-6666
fax 270-782-8666

/s/ Stefan Richard Hughes
Stefan Richard Hughes