



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

20-ORD-188

December 1, 2020

In re: Stephen Zoglman/Foundation for Daviess County Public Schools, Inc.

Summary: In the absence of any evidence that the Foundation for Daviess County Public Schools (“Foundation”) was established, created, and controlled by a public agency, or that a majority of its governing body is appointed by a public agency, the Foundation is not a public agency that must comply with the Open Records Act (“the Act”).

Open Records Decision

On November 14, 2019, Stephen Zoglman (“Appellant”) requested to inspect a list of the Foundation’s donors. In response, the Foundation stated that it was “not subject to open records requests” and was “not at liberty to disclose its donor list.”¹ This appeal followed.

Only a “public agency” is subject to the Act’s requirements. Under the Act, “Public agency” is defined to include entities “established, created, *and* controlled by a public agency[.]” KRS 61.879(1)(j) (emphasis added). In using the conjunctive “and,” the General Assembly intended not only that the entity be established and created by a public agency, but also that the public agency control that entity. Alternatively, a “public agency” may also include “[a]ny entity where the majority of its governing body is appointed by a public agency as defined in . . . this

¹ The Foundation’s website lists the membership of its board of directors at www.foundationfordcps.org/Board-of-Directors (last visited Nov. 11, 2020).

subsection; by a member or employee of such a public agency; or by any combination thereof.” KRS 61.870(1)(i).

Appellant claims that the Daviess County Board of Education (“School Board”) controls the Foundation because it shares its address with the Board and because the Foundation’s twelve-member board of directors includes the Superintendent of the Daviess County Schools, *ex officio*, and one representative appointed by the School Board. But even so, this means two members of the twelve-member body are representatives of the School Board – well short of a controlling majority. Moreover, Appellant offers no evidence that the Foundation was established or created by the School Board.² For its part, the Foundation continues to assert on appeal that it is a private entity and therefore not subject to the Act. There being no evidence to the contrary, the Foundation is not a “public agency” within the meaning of the Act and it was not required to comply with Appellant’s request.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

#354

² Appellant asserts that the Foundation was founded in 1999 as the “Daviess County High School Alumnae and Friends.” According to its website, the Foundation’s mission is “to assist Daviess County Public Schools in providing the highest quality learning environment possible for all 11,700+ children by removing barriers to education and providing educational enhancement opportunities not paid for by taxes.” See www.foundationfordcps.org/About-the-Foundation (last visited Dec. 1, 2020).

20-ORD-188

Page 3

Distributed to:

Mr. Stephen Zoglman

Ms. Vicki Quisenberry

Clay Wilkey, Esq.