



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

22-OMD-163

August 16, 2022

In re: Matthew Miller/Mercer County Board of Education

Summary: The Mercer County Board of Education (“the Board”) violated the Open Meetings Act (“the Act”) when it failed to issue a timely response to a complaint. However, the Act does not require the Board to post its meeting minutes to its website.

Open Meetings Decision

On July 13, 2022, Matthew Miller (“the Appellant”) submitted a written complaint to the Superintendent alleging that the Board had violated the Act because “[t]he minutes haven’t been uploaded for public viewing [or] inspection.” Having received no response, the Appellant sent another email to the Superintendent on July 26, 2022. In his second email, the Appellant stated it was his “second attempt to inform” the Board that it was “in violation of the open records acts [*sic*]. The meeting minutes have not been posted for July and the board has completed their regular meeting scheduled for July.” Having received no response from the Superintendent, the Appellant initiated this appeal on August 2, 2022.

Under KRS 61.846(1), upon receiving a complaint under the Act a public agency must determine whether to remedy the alleged violation or deny the complaint, and notify the complainant of its decision within three business days of receiving the complaint.

Here, the Appellant emailed his complaint to the Superintendent on July 13, but the Superintendent did not respond to the complaint within three business days.¹

¹ Admittedly, in his first complaint dated July 13, the Appellant accused the Board of violating both the Open Records Act and the Open Meetings Act. In his second complaint on July 26, the Appellant accused the Board of violating “the open records acts.” However, the Appellant did not request to inspect records in either of these two emails. Rather, he complained that the Board had failed to post

Then the Appellant emailed a second complaint on July 26, but still had not received a response by August 2, 2022. On appeal, the Board claims to have “corresponded with” the Appellant about the issue, but the Board does not provide a copy of any such correspondence. The Board’s written response was due within three business days of receipt of the complaint, and the Board provides no proof that it issued a written response to the Appellant within three business days. Accordingly, the Board violated the Act when it failed to respond within three business days.

Although the Board failed to issue a timely response to the complaint, it did not otherwise violate the Act. The Appellant complains that the Board did not post its June meeting minutes to its website after its July meeting. However, “[t]he minutes of action taken at every meeting of any such public agency . . . shall be promptly recorded and such records shall be *open to public inspection* at reasonable times no later than immediately following the next meeting of the body.” KRS 61.835 (emphasis added). The statute only requires the meeting minutes to be open to public inspection, like all other nonexempt public records. *Compare* KRS 61.835 *with* KRS 61.872(1) (“All public records shall be open for inspection by any resident of the Commonwealth, except as otherwise provided by KRS 61.870 to 61.884.”) A public agency complies with KRS 61.835 when it makes its meeting minutes available for public inspection following the next meeting of the agency. But the Appellant did not submit a request to inspect the meeting minutes under the Open Record Act. He complained that the minutes were not posted to the Board’s website, which the Open Meetings Act does not require the Board to do. *See, e.g.*, 21-OMD-086 n.3 (finding that the Act does not require an agency to post its meeting minutes to its website).²

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.846(4)(a) within 30 days from the date of this decision. 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. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

s/Marc Manley
Marc Manley
Assistant Attorney General

its meeting minutes, which could only be construed as a complaint that the Board was violating the Open Meetings Act.

² The Office notes that KRS 61.835 was enacted in 1974 and has never been amended. Ky. Acts ch. 377, § 7. Websites did not exist in 1974. Regardless, the Board voluntarily posts its minutes to its website, and the Appellant admits that the minutes at issue are now posted on the Board’s website.

#265

Distributed to:

Mathew Miller
J. Hadden Dean
Jason Booher