



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-OMD-177

August 31, 2022

In re: Kurt Wallace/Jefferson County Board of Education

Summary: To invoke the Attorney General’s jurisdiction to review a complaint under the Open Meetings Act (“the Act”), a complainant must strictly comply with KRS 61.846. Because the Appellant failed to submit a complaint to the presiding officer of the public agency accused of violating the Act, the Office cannot render a decision and dismisses the appeal.

Open Meetings Decision

Kurt Wallace (“the Appellant”) claims he attempted to attend a public meeting of school officials on July 28, 2022. However, he claims he was unable to attend because he was not wearing a face mask. The Appellant was allegedly informed that, due to a recent policy enacted by the Jefferson County Board of Education (“the Board”) and because of the then-current status of COVID-19 cases in Jefferson County, all members of the public entering Board property were required to wear face masks. He then attempted to initiate this appeal. For the following reasons, he has failed to properly invoke the Office’s jurisdiction. Accordingly, the appeal is dismissed.

In 22-ORD-165, this Office explained its role in deciding disputes under the Open Records Act. As stated in that decision,

When reviewing a dispute under KRS 61.880, this Office sits as an administrative adjudicative body. Under Kentucky law, administrative proceedings are creatures of statute and are provided as a matter of grace by the General Assembly. *See, e.g., Kenton Cnty. Bd. of Adjustment v. Meitzen*, 607 S.W.3d 586, 594 (Ky. 2020) (administrative appeals are statutory proceedings that require strict compliance with the enabling

statutes). Thus, when a person seeks this Office's review under KRS 61.880, he must strictly comply with that statute. *See, e.g., 22-ORD-078* (dismissing an appeal that failed to comply with KRS 61.880).

Likewise, the Office's review of a complaint submitted under the Open Meetings Act is an administrative proceeding provided as a matter of grace by the General Assembly. Thus, a person seeking to invoke the Office's jurisdiction to review a complaint under the Open Meetings Act must strictly comply with KRS 61.846. In other words, "[i]f a person enforces KRS 61.805 to 61.850 (*i.e.*, any provision of the Open Meetings Act), pursuant to this section (*i.e.*, KRS 61.846), he *shall* begin enforcement under this subsection (*i.e.*, KRS 61.846(1)), before proceeding to enforcement under subsection (2) of this section (*i.e.*, KRS 61.846(2)). The person *shall* submit a written complaint *to the presiding officer of the public agency suspected of the violation* of KRS 61.805 to 61.850." KRS 61.846(1) (emphasis added). Moreover, the Attorney General's mandate under KRS 61.846(2) is to "review the complaint and denial and issue within ten (10) [business] days . . . a written decision which states whether the agency violated the provisions of KRS 61.805 to 61.850."

Like courts, the Office recognizes the call to provide a generous reading of the claims raised by *pro se* litigants. *See Adkins v. Wrightway Readymix, LLC*, 499 S.W.3d 286, 289 (Ky. App. 2016). That is especially true in appeals to this Office, because the very purpose of this type of proceeding is to provide non-lawyer members of the public a fast and cost-free way to resolve their disputes with public agencies under the Open Records and Open Meetings Acts.¹ But generous readings of *pro se* claims may only go so far when juxtaposed against the strict compliance demanded of administrative proceedings. The Office's review is limited to alleged violations of the Open Meetings Act, not generalized grievances about whether a public agency is complying with various other laws. KRS 61.846(2); *see also* 18-OMD-163 n.7; 12-OMD-080; 10-OMD-023.²

¹ It is also for that reason that the Office screens potential appeals for compliance with KRS 61.846 and issues notices of unperfected appeals when an appellant fails to comply with the statute. Those notices of unperfected appeals instruct complainants to provide copies of their original complaint and the agency's original response to the complaint. The Office did that here once before, and issued a notice of unperfected appeal on August 3, 2022, when the Appellant failed to provide copies of *any* complaints to presiding officers alleging *any* violation of the Open Meetings Act. This is now the Appellant's second attempt to perfect his appeal.

² For example, with this appeal, the Office received hundreds of documents, many stapled a few at a time, alleging several violations of law unrelated to the Open Meetings Act against no less than six public agencies or officers. The Appellant makes various claims that his constitutional rights were violated, and that various public agencies have committed federal crimes. Moreover, the Appellant did not organize his complaints or the agencies' responses thereto in any coherent fashion. For instance, the Appellant included his complaint against the Board as "Enclosure 6" and the Board's response as "Enclosure 21." The Appellant included his correspondence to, and responses from, agencies that had nothing to do with the meeting in question, copies of various trial court judgments, allegations and articles about federal agencies, a Columbia University law review article, various medical articles, and

When initially reviewing the Appellant's cover letter, it was clear that he challenged the prevention of his entry to a meeting of Jefferson County Public School officials on July 28, 2022. But he submitted complaints to the Superintendent of Jefferson County Public Schools, the chair of the Kentucky Board of Education, the Commissioner of the Kentucky Department of Education, the General Counsel for the Kentucky Department of Education, the Jefferson County Sheriff's Office, and the Jefferson County Judge/Executive's Office. Among all of these complaints, the only one that had arguably been sent to "the presiding officer of the public agency suspected of the violation" was the Appellant's complaint submitted to the Superintendent, because it appeared as though the Appellant had been denied entry to a meeting of the Board.

However, upon further review of the appeal, the Appellant was allegedly denied entry to a meeting of the Jefferson County Public Schools Site Based Decision Making Council. Site based decision making councils are public agencies that are separate and distinct from local boards of education. *See* KRS 161.345(2)(a). They are comprised of parents, teachers, and either a principal or school administrator. *Id.* Superintendents shall work with such councils in preparing and selecting school curriculum, but superintendents are not members of such councils. KRS 161.345(2)(g). And members of the local boards of education, as well as their spouses, are expressly prohibited from serving as members on such councils. KRS 161.345(2)(a). The meetings of such councils "shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply." KRS 161.345(2)(e).

Although the Appellant submitted a complaint to the Superintendent of Jefferson County Public Schools, the Superintendent was not the presiding officer of the July 28 meeting at which the Appellant was allegedly denied entry.³ The Appellant did not provide a copy of a complaint submitted to the presiding officer of the Jefferson County Public Schools Site Based Decision Making Council, which is a separate and distinct public agency that is alleged to have committed a violation of the Open Meetings Act. Accordingly, the Appellant did not comply with KRS 61.846(1) before initiating his appeal to this Office, and the Office dismisses the appeal.

a copy of the Nuremberg code. Only after spending significant time carefully reviewing this stack of papers could the Office discern what *might* have been a complaint to a presiding officer of an agency that *might* have committed the violation, and that agency's response to that complaint.

³ While the face mask policy may be Board policy, the agency that conducted the meeting and allegedly denied the Appellant entry was the Jefferson County Site Based Decision Making Council. Whether the Board's face mask policy is supported by law or sound judgment is a wholly separate question from whether the Board violated the Open Meetings Act at a meeting it did not conduct.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.846(4)(a). 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.

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Distributed to:

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