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24-OMD-160

July 9, 2024

In re: Robert Mattheu/Cassidy Elementary School-Based
Decision-Making Council

Summary: The Cassidy Elementary School-Based Decision-Making Council (“the Council”) violated the Open Meetings Act (“the Act”) when it failed to properly document votes taken at its February 26 and March 25, 2024, meetings.

Open Meetings Decision

On May 14, 2024, Robert Mattheu (“the Appellant”) submitted a complaint to the Superintendent of the Fayette County Public Schools, claiming the Council violated the Act at its February 26 and March 25, 2024, meetings when it conducted two anonymous votes regarding the removal of a subject from the school curriculum. As a remedy, the Appellant proposed that the Council “revisit their decision” and “go on the record with their discussion and vote and . . . properly document the votes in their meeting minutes.”¹ The Office determined that it lacked jurisdiction to consider that complaint because it was not first submitted to the presiding officer of the Council.²

Subsequently, on June 22, 2024, the presiding officer of the Council responded to the Appellant’s original complaint, stating it “grants each of [the Appellant’s] requests to the extent discussed below,” explaining that the Council had revisited its February 26 vote at its March 25 meeting, that it “agrees to amend its minutes to reflect that each member of [the Council] voted to uphold the February decision,” and that it would “conduct additional training on open meeting and open records for its members. Moreover, the Council stated that its “substantive decision will remain unchanged.” The Appellant initiated a new appeal from the Council’s June 22 response.

¹ The Appellant also proposed that all Fayette County School-Based Decision-Making Councils “be properly trained in both open meetings and open records law to avoid future violations.”

² See 24-OMD-133.

If an agency agrees to remedy the alleged violation, and the complainant believes those attempts are “inadequate,” KRS 61.846(3), the Appellant may seek this Office’s review “as if the public agency had denied *the original complaint*,” KRS 61.846(3)(c) (emphasis added). Under KRS 61.835, “The minutes of action taken at every meeting of any such public agency, *setting forth an accurate record of votes and actions at such meetings*, shall be promptly recorded” (emphasis added). The Office has previously held that, “when final action is taken by a public agency in open session the vote cannot be by secret ballot *and* it must be recorded in the minutes how each member voted. OAG 82-341. Here, the Council agrees it “should not have used an anonymous vote” and states that it will “amend its minutes to reflect that each member of the [Council] voted to uphold that February decision.” Thus, the Council violated the Act when it used anonymous votes and did not accurately record its votes in its meeting minutes.³

A party aggrieved by this decision may appeal it by initiating an 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 emailed to OAGAppeals@ky.gov.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

³ On appeal, the Council reaffirms that it has implemented the Appellant’s proposed remedies. Although the Act allows a complainant who believes an agency’s remedies are “inadequate,” to proceed to seek the Office’s review “as if the public agency had denied the original complaint,” the Act still limits the Office’s role in adjudicating a dispute arising under the Act to determining “whether the agency violated the provisions of KRS 61.805 to 61.850.” *See* KRS 61.846(2). Simply put, the Office “is not empowered to declare void action taken at an illegal meeting, impose penalties for violation of the Act, or *compel an agency to implement the remedial measures proposed*.” 19-OMD-082 n.5 (emphasis added).

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Distributed to:

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