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24-OMD-191

September 9, 2024

In re: The College Heights Herald/Western Kentucky University  
Board of Regents

**Summary:** The Western Kentucky University Board of Regents (“the Board”) violated the Open Meetings Act (“the Act”) when it failed to issue a written response to a complaint within three business days. The Office cannot find that the Board violated KRS 61.810(2) by holding a series of less-than-quorum meetings.

***Open Meetings Decision***

On July 31, 2024, counsel for the College Heights Herald (“the Appellant”) submitted a complaint to the presiding officer of the Board, alleging it violated KRS 61.810(2) when it held a series of “workshops” on June 3 and 4, 2024, in which its members discussed their “upcoming votes on the University’s operating budget.” Having received no response from the Board, the Appellant initiated this appeal on August 23, 2024.

Upon receiving a complaint alleging a violation of the Act, a “public agency shall determine within three (3) business days . . . after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision.” KRS 61.846(1). On appeal, the Board does not deny that it failed to respond to the Appellant’s complaint concerning the April 8, 2024, meeting.<sup>1</sup> Thus, the Board violated the Act.

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<sup>1</sup> The Board explains that it does not monitor its official email and that the complaint should have been directed to WKU’s general counsel or outside counsel with whom the Appellant had discussed this matter. But, under KRS 61.846(2), a complainant must “submit a written complaint to the presiding officer of the public agency suspected of” violating the Act. Presumably, neither WKU’s general counsel nor outside counsel is the presiding officer of the Board. Thus, under the Act, the Appellant was not permitted to initiate its complaint by directing it to WKU’s general counsel or outside counsel.

Under KRS 61.810(1), “[a]ll meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times[.]” Furthermore, KRS 61.810(2) provides:

Any series of less than quorum meetings, where the members attending one (1) or more of the meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the requirements of subsection (1) of this section, shall be subject to the requirements of subsection (1) of this section. Nothing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues.

Thus, the Act not only prohibits a quorum from taking action in private, but also “prohibits a quorum from discussing public business in private or meeting in number less than a quorum for *the express purpose* of avoiding the open meeting requirement of the Act.” *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 474 (Ky. 1998) (emphasis added). The Supreme Court defined “public business” to include “the discussion of the various alternatives to a given issue about which the board has the option to take action.” *Id.*

Here, the Appellant alleges that a quorum of the Board’s members discussed their “upcoming votes on the University’s operating budget” at the June 3 and 4 workshops and, thus, public business was discussed. For its part, the Board argues public business was not discussed because “budgetary staff had already prepared [the proposed budget] prior to” the June 3 and 4 meetings, and so the Board members could not discuss “policy alternatives, potential changes to the budget proposal, or debate the merits of the budget.” Rather, the Board maintains that members of the budget staff “made themselves available so individual [Board members] could, if they chose, educate themselves concerning the contents of the” proposed budget.

As support for its position, the Appellant quotes one Board member who described the workshops as “just breaking down the budget and allow[ing] for questions.” But this quote suggests, as argued by the Board, that it did not discuss public business at its June 3 and 4 meetings; rather, its members had the opportunity to “educate themselves” about the contents of the 79-page proposed budget. However, in appeals under the Act, the Office cannot resolve factual disputes between the parties. *See, e.g.*, 23-OMD-103; 22-OMD-236; 19-OMD-187; 12-OMD-080. Here, the

Office cannot resolve the dispute between the parties as to whether the Board members discussed their “upcoming votes on the University’s operating budget” at the June 3 and 4 workshops.

Furthermore, a series of less-than-quorum meetings must be held “for the purpose” of avoiding the obligations of the Act. KRS 61.810(2). In essence, KRS 61.810(2) contains a *mens rea* requirement. See *Elm Street/McCracken Pike Preservation Alliance, Inc. v. Siegelman*, No. 2005-CA-002079, 2007 WL 3228090, at \*5 (Ky. App. 2007). Moreover, KRS 61.810(2) also provides, “Nothing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues.” The Office has not hesitated to find a violation of the Act when there is evidence that the members of a public agency intended to circumvent the Act. See, e.g., 18-OMD-153; 94-OMD-106. However, when evidence of the members’ intent is lacking, the Office has acknowledged its inability to conclusively determine that the public agency violated KRS 61.810(2).

Here, the Appellant offers as evidence a Board member who stated, “After the meeting, [he] greeted [two Board members], who [he] assumed, were there to occupy a meeting slot immediately following us.” But this quote does not demonstrate an intent to avoid the obligations of the Act. Rather, it shows only that one Board member believed two other Board members would attend the next meeting. The Appellant has not demonstrated that the June 3 and 4 meetings were held “for the purpose” of avoiding the obligations of the Act or that those meeting were not held “to educate the members on specific issues.” Accordingly, the Office cannot find the Board conducted a series of less-than-quorum meetings in violation of the Act.

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](mailto:OAGAppeals@ky.gov).

**Russell Coleman**  
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/s/ Zachary M. Zimmerer  
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