



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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24-OMD-251

November 26, 2024

In re: Jody Franklin/Morgan County Water District Board

Summary: The Morgan County Water District Board (“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 Board also violated the Act when it conducted a closed session to discuss the payroll of a current employee under KRS 61.810(1)(f).

Open Meetings Decision

On October 19, 2024, Jody Franklin (“the Appellant”) submitted a complaint to the Chair of the Board alleging it violated the Act by closing its meeting to the public to discuss general personnel matters without stating which exemption allowed it to go into closed session. As a remedy for the alleged violation, the Appellant proposed that the Board discuss in open session the matters that had been discussed in closed session and that any action that resulted from the alleged improper closed session be declared null and void. Having received no response from the Board, the Appellant initiated this appeal on November 9, 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) (emphasis added). On appeal, the Board does not deny that it failed to respond to the Appellant’s complaint in writing.¹ Thus, the Board violated the Act.

¹ Instead, the Board explains that it did take action to remedy the Appellant’s complaint as she requested at its November 4, 2024, meeting and verbally responded to the Appellant’s complaint there. The Board further states that no action resulted from the closed session that could be declared null and void. Moreover, the Board denies that it violated the Act.

Turning to the merits of the Appellant’s complaint, under KRS 61.810(1)(f), a public agency may enter closed session to hold discussions “which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student.” That exception, however, does not “permit discussion of general personnel matters in secret.” *Id.* On appeal, the Board does not claim its discussions in closed session related to the possible appointment, discipline, or dismissal of any individual. Rather, the Board merely states that “the reason for the closed session was identified specifically as ‘an employee payroll [*sic*].” Moreover, the record provided by the parties indicates that the employee in question is a current employee of the Board, rather than a prospective employee.²

Further, the Board does not claim that it cited KRS 61.810(1)(f) or explained how it applied, prior to entering closed session. *See* KRS 61.815(1) (requiring a public agency to announce, before entering closed session, the exemption on which it relies, explain how it applies, and vote on a motion to enter closed session unless discussing an exemption enumerated in KRS 61.815(2)). As the Office has previously explained, an agency relying on KRS 61.878(1)(f) must specifically announce whether the discussion is about the potential appointment, discipline, or dismissal of an employee before entering closed session to ensure the agency is not engaging in “discussion[s] of general personnel matters in secret,” which the exemption expressly forbids. *See, e.g.,* 24-ORD-096; 21-OMD-091; 13-OMD-086. Therefore, the Board violated the Act when it closed its discussion of “employee payroll” that did not pertain to the possible appointment, discipline, or dismissal of individual employees or members.

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

² The Board refers the Office to a newspaper article, provided by the Appellant, which documented the Board’s verbal response at its November 4, 2024, meeting. Because both parties refer to that article as an accurate description of the November 4, 2024, meeting, the Office refers to that article’s content herein.

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Distributed to:

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