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22-OMD-171

August 24, 2022

In re: David Webster/Christian County Board of Education

Summary: The Christian County Board of Education (“the Board”) violated the Open Meetings Act (“the Act”) when it failed to respond within three business days after receiving a complaint under the Act. The Board did not violate the public notice requirements of the Act, and did not violate the Act when it took action by voting at a regular meeting that it had informally described as a “workshop.”

Open Meetings Decision

On August 5, 2022, in a written complaint submitted under KRS 61.846(1), David Webster (“Appellant”) alleged that the Board had violated the Act by voting on agenda items at a meeting on August 4, 2022, which the Board had described as a “workshop.” The Appellant further alleged that the Board had violated the Act by not purchasing a newspaper advertisement giving notice of the meeting. Having received no response to his complaint by August 11, 2022, the Appellant initiated this appeal.

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). Here, the Board acknowledged receipt of the complaint on August 6, 2022, but it did not respond within three business days thereafter. Thus, the Board violated the Act when it failed to respond to the Appellant’s complaint.

Turning to the Appellant’s substantive allegations, the Act recognizes two types of meetings—regular meetings and special meetings. Under KRS 61.820, a public agency must adopt a schedule of regular meetings and make that schedule available to the public. Meetings that do not appear on the regular meeting schedule,

or that are not held at the time and place indicated on the schedule, are “special meetings,” which are subject to the notice requirements under KRS 61.823. On appeal, the Board has shown that its meeting on August 4, 2022, was listed on the schedule of regular meetings that the Board had adopted on December 16, 2021, and had made available to the public. Furthermore, the August 4 meeting occurred at the time and place stated on the schedule.

The Appellant, however, notes that the Board’s published meeting schedule lists its meetings by two categories—“Board workshops” and “regular Board meetings”—and that the August 4, 2022 meeting is listed under “Board workshops.” He further argues that the published agenda for the August 4 meeting was titled “Special Board Meeting/Workshop.” Based on these facts, the Appellant claims that the August 4 meeting was either a special meeting, subject to the requirements of KRS 61.823, or a third type of meeting called a “workshop,” at which (according to the Appellant) no votes may be taken. Thus, the Appellant argues that the Board either conducted an illegal special meeting in violation of notice requirements or illegally voted on matters at a “workshop” meeting.

The Act, however, recognizes no third type of meeting. There are only two types of meetings—regular and special meetings.¹ According to the Board, it has developed a local custom of referring to certain regular meetings as “Board Workshop Meetings.” These “workshops” differ from the Board’s so-called “Regular Meetings” only in their lack of certain formalities such as an invocation, recitation of the Pledge of Allegiance, recognition for accomplishments of certain groups and individuals, and allotment of time for public comment. For purposes of the Act, however, the “workshops” are regular meetings because they are listed on the regular meeting schedule and the public may attend.

Regular meetings are not subject to the requirements of 61.823, which provides strict written notice requirements and limits discussion to the agenda that must accompany such notice. Thus, the Board was not required to give a special meeting notice or agenda for the meeting on August 4, 2022. The inclusion of the meeting on the regular meeting schedule was the only public notice required under the Act.² Furthermore, because the August 4 meeting was a regular meeting, there is no provision of the Act that would have prevented the Board from voting in open session

¹ “Emergency meetings” are a particular type of special meetings. *See* 22-OMD-17 n.1.

² Even in the case of a special meeting, the Act does not require a public agency to place a newspaper advertisement, as the Appellant argues. Rather, the Act requires an agency to distribute notice of the special meeting to media (including newspapers) that had previously submitted a written request to the agency to receive such notices. KRS 61.823(4)(a).

on any matter being discussed. Accordingly, the Board did not violate the Act at its meeting on August 4, 2022, as alleged by the Appellant.³

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.

Daniel Cameron
Attorney General

s/James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

Mr. David Webster
Jack N. Lackey Jr., Esq.
Christopher Bentzel, Superintendent

³ The Board indicates that for each of its regular meetings, including the “workshop” on August 4, 2022, it complies with all of the notice provisions applicable to special meetings under KRS 61.823. Therefore, the Board not only complied with the Act, but went beyond the strict provisions of the Act in giving notice of the meeting in question.