



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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24-OMD-007

January 17, 2024

In re: Josh Hicks/Anderson County Board of Education

Summary: The Anderson County Board of Education (“the Board”) violated the Open Meetings Act (“the Act”) when it entered closed session without a motion and vote and without notifying the public of the exemption on which it relied to enter closed session.

Open Meetings Decision

On December 6, 2023, Josh Hicks (“the Appellant”) submitted a written complaint to the presiding officer of the Board, alleging the Board had violated the Act at its November 13, 2023, meeting. Specifically, he alleged the Board violated KRS 61.815(1) by entering closed session without providing notice of the exemption authorizing closed session or explaining how any exemption applied. The Board also did not vote to enter closed session. As a suggested remedy, the Appellant asked the Board to discuss in open session at its next meeting the same matters that were discussed in closed session. He also asked that any action taken during the closed session be declared null and void.

In a timely response, the Board admitted it had not complied with KRS 61.815(1). However, the Board claimed the “bulk” of its time in closed session “consisted of the Board members listening to” the Board’s attorney. The Board also admitted the Superintendent engaged in dialogue with one member while the rest of the members “were bystanders and witnesses to that dialogue.” Although one member attempted to make a motion in closed session, he was informed no final action could occur in closed session, and therefore, no action was taken that could be considered void. The Board stated its members would be reminded of the requirement to comply with KRS 61.815(1) before entering closed session, but the Board declined to provide the Appellant with his requested relief of discussing the same matters again in open session at its next meeting. This appeal followed.

Barring certain exceptions, “[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.” KRS 61.810(1). If a public agency intends to rely on one of the exceptions to discuss public business in closed session, it must comply with KRS 61.815(1).¹ As such, it must give notice “in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session.” KRS 61.815(1)(a). It must also approve a motion by majority vote to enter closed session. KRS 61.815(1)(b). Here, the Board admits it failed to comply with KRS 61.815(1)(a) and (b). Accordingly, the Office finds it violated the Act.²

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/ Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

Josh Hicks
Grant R. Chenoweth

¹ However, KRS 61.815(2) states that a public agency “shall be excluded from the requirements of” KRS 61.815(1) if it is discussing one of several enumerated exceptions to the Act. Because the Board concedes it violated KRS 61.815(1), and has not stated in response to the complaint or on appeal what exception it relied on to enter closed session, the Office need not determine whether KRS 61.815(2) applies.

² To the extent the Appellant asks the Office to require the Board to provide him with his requested relief, the Office lacks jurisdiction to do so. Under KRS 61.846(2), “[t]he Attorney General shall review the complaint and denial and issue within ten [business] (10) days . . . a written decision which states whether the agency violated the provisions of” the Act. Only a circuit court of competent jurisdiction can order further relief in connection with a complaint under the Act. See KRS 61.848(1); see also 21-OMD-074 n.2.