

17-OMD-222

October 27, 2017

In re: Lawrence Trageser/University of Louisville Board of Trustees

Summary: The University of Louisville Board of Trustees did not violate the Open Meetings Act by informational calls made by the Interim President to board members notifying them of the decision to place the Vice President on administrative leave. The University of Louisville Board of Trustees violated the Open Meetings Act by not responding to a complaint.

Open Meetings Decision

The questions presented in this appeal are whether the University of Louisville Board of Trustees (“U of L Board”) violated the Open Meetings Act by not responding to a complaint, and by informational calls made by the Interim President to board members notifying them of the decision to place Mr. Jurich on administrative leave. We find that the U of L Board violated the Open Meetings Act in not responding to a complaint. The U of L Board did not violate the Open Meetings Act by informational calls made by the Interim President to board members notifying them of the decision to place Mr. Jurich on administrative leave.

Lawrence Trageser submitted an open meetings complaint to the U of L Board on September 29, 2017. Trageser asserted that:

The current Chairman of the University of Louisville Board of Trustees, David Grissom, on or about the days of September 26 through September 27 of 2017 directly called every board member

to discuss with them, the forth coming action planned and implemented by the University of Louisville President to suspend and or place on administrative leave Coach Rick Pitino and Athletic Director Tom Ulrich.

Chairman David Grissom admitted to this action during a press conference held at the University of Louisville on September 27, 2017 at 1:00 P.M. EST. Grissom specifically stated he had contacted or called every board member and that no board meeting was held and that all board members were in agreement and supported the President's decision, concerning the placement of administrative leaves.¹

Trageser alleged that the U of L Board violated the Open Meetings Act in conducting a secret special meeting without complying with KRS 61.823. The U of L Board did not respond to Trageser's complaint.

Trageser initiated this appeal on October 11, 2017, alleging that "KRS 61.846(1) has been violated in not responding within the three days," and incorporating the arguments in his complaint.² The U of L Board responded on October 17, 2017, stating:

Under University governance documents, specifically *The Redbook* Chapter 2, the actions taken vis-à-vis Vice President Jurich's employment status were entirely within the administrative discretion of the University's Interim President. No action of the

¹ Trageser requested as relief that:

- 1) A public apology shall be presented at their next regular meeting on October 11, 2017 and incorporated into the minutes.
- 2) A press conference shall be called and Chairman David Grissom shall present a public apology for the violations against the Open Meetings Act and the transparencies aimed at protecting the public's right to know.
- 3) The University of Louisville Board of Trustees shall cease and desist from violating the Open Meetings Act in the future and each member shall sign an affidavit confirming that they have read and understand the Open Meetings Act and will comply with its procedures.

² Trageser subsequently submitted a recording of the press conference. In response to a question whether a meeting of the U of L Board had occurred, Mr. Grissom said, "I called everyone on the board within the last twenty-four hours to get their position on it, and these were telephonic conversations, no meeting." This statement is not sufficient to establish that the conversations were more than informational, that alternatives were discussed, or that any action was taken.

Board of Trustees was taken on September 27, 2017, nor was it required. As stated at the press conference, the individual members of the Board of Trustees were informed of the Interim President's decision to place Mr. Jurich on paid leave From those calls, the Chairman gleaned that the members supported the President's actions.

. . . .

Similarly, no meeting was held, or required when the Chair of the University of Louisville Board of Trustees contacted the individual Board members to inform them of the Interim President's decision to place the Vice President for Athletics on paid leave. Under KRS 61.810(2), "[n]othing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussions between individual members is to educate the members on specific issues." . . .

As for the actions taken relative to the employment status of Mr. Rick Pitino, the communications by the Chair were advisory. Mr. Pitino was an employee of the University of Louisville Athletic Association, Inc., which is governed by a wholly separate Board of Directors, which met yesterday in accordance with all statutory mandates for the meeting and associated actions regarding Mr. Pitino's employment.

KRS 61.846(1) provides that "the public agency shall determine within three (3) 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." It is not disputed that the U of L Board did not respond to Trageser's complaint. Accordingly, in failing to respond to a complaint, the U of L Board violated the Open Meetings Act.

KRS 61.810(1) provides that "all 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(2) provides that "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.” However, it further provides that “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.”

In 16-OMD-065, we summarized the interpretation of KRS 61.810(2):

“[T]he Act 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 meetings requirements of the Act.” *Yeoman v. Commonwealth of Kentucky, Health Policy Board*, 983 S.W.2d 459, 474 (Ky. 1998). Violation of the Open Meetings Act, insofar as it relates to “secret meetings,” is therefore predicated on two kinds of prohibited conduct: (1) a private meeting of a quorum of the members of an agency at which public business is discussed or action is taken; and (2) a series of less than quorum meetings attended by members of the agency collectively constituting a quorum which are held for the purpose of circumventing the requirements of the Act. The Court in *Yeoman* further observed that for a meeting to take place within the meaning of the Act, “public business must be discussed or action must be taken by the agency. Public business is not simply any discussion between two officials of the agency. Public business is the discussion of the various alternatives to a given issue about which the board has the option to take action.” *Id.* Taking action, the Court noted, “is defined by the Act as ‘a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body.’ KRS 61.805(3).” *Id.*

16-OMD-065. A public agency violates the Open Meetings Act by a series of less-than-quorum discussions only if public business is discussed or action is taken, or if the meeting is held for the purposes of circumventing the requirements of the act.

Here, the Interim President had the independent authority to place Mr. Jurich on administrative leave, and did not require any action of the U of L Board

to do so. The Interim President may call and communicate notification of this action to U of L Board members, as long as no discussion of the various alternatives is conducted or action is taken. The record in this case is insufficient to support a finding that the U of L Board discussed alternatives to placing Mr. Jurich on administrative leave, or that the U of L Board itself took action to do so. Similarly, the record does not support a finding that any action of the U of L Board was discussed or involved in placing Coach Pitino on administrative leave; those actions were the purview of the board of the University of Louisville Athletic Association, Inc. Therefore, no meeting of the U of L Board subject to the Open Meetings Act took place.³ Accordingly, we do not find that the U of L Board violated the Open Meetings Act in phone calls made by the Interim President to notify board members of his decision to place Mr. Jurich on administrative leave.

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 must be notified of any action in circuit court, but should not be named as a party in that action or in any subsequent proceedings.

Andy Beshear
Attorney General

Matt James
Assistant Attorney General

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Distributed to:

Lawrence Trageser
David Grissom
Leslie Chambers Strohm

³ Having found that no meeting took place subject to the Open Meetings Act, we must necessarily find that the U of L Board did not violate the statutes regarding special meetings.