



Hon. Jeff Hoover, Speaker of the House
Kentucky House of Representatives
700 Capital Avenue Room 309
Frankfort, KY 40601

Re: Open meetings complaint

Dear Speaker Hoover:

This is an open meetings complaint by the Bluegrass Institute Center for Open Government. On August 29, 2017, the House of Representatives conducted a meeting of a quorum of its members to discuss pension reform. The meeting was closed, and no member of the public was permitted to attend.

This closed meeting constituted a violation of KRS 61.810(1) which states that “[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” unless the public business to be discussed falls within one or more of the 13 exceptions recognized by the General Assembly and enacted into law. There is no specific exception to the open meetings act for discussion of pension reform. Nor is there a general exception to the open meetings act under which discussion of pension reform falls.

The stated reason for the closed session was to permit House members to “express themselves freely.” It was described as “informational” only. Under the broadly worded definition of the term “meeting” adopted into law by the General Assembly at KRS 61.805(1), this includes “informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting.”

A similar argument was advanced by the House of Representatives in 1993 when its members proposed to meet in closed session to obtain information about then Governor Brereton Jones’s health care reform proposal. In 93-OMD-63 and 93-OMD-64, open meetings decisions issued by the Kentucky Attorney General based on two challenges to the same meeting, the attorney general determined that as a state legislative body the House of Representatives is a public agency pursuant to KRS 61.805(2)(b) and its meetings are subject to the open meetings act.

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Moreover, the attorney general reasoned, KRS 61.810(1)(i) creates an exception for closed session discussions of “Committees of the General Assembly other than standing committees.” If the House of Representatives was, he concluded, “excluded from the coverage of the Open Meetings Act, then the law would not make a distinction as to what kinds of House Committees are excluded from the provisions of the Act.”

The only defense raised by the House in 1993 was the fact that a quorum of its members was not present for the closed door discussion of public business. In both 93-OMD-63 and 93-OMD-64, the attorney general held that *but for* the absence of a quorum of the members of the House of Representatives at the closed session meetings to discuss health care reform, the meetings would have constituted a violation of the open meetings act. That defense is not available to the House in the case of its August 29 closed meeting since a quorum of its members attended the meeting to discuss pension reform.

Please note that the Attorney General also rejected the argument that the closed meeting was permissible because it constituted a caucus meeting. In 93-OMD-63 and 93-OMD-64, the Attorney General looked to the definition of the term “caucus,” observing:

“Webster's Third New International Dictionary (1963) defines ‘caucus’ in part as follows, at page 355: ‘A conference of party or organization leaders (as in legislators) to decide on policies, plans, appointees and candidates; a local or regional meeting of party members to choose candidates or delegates.’ Perhaps the meeting was originally intended to be some kind of caucus meeting but at least one of the media persons maintains that every member of the House was invited to attend the meeting regardless of party affiliation. This office does not know who specifically attended the meeting but if invitations were extended to all members, regardless of party affiliation, then, by definition, the meeting was not a caucus meeting.”

In light of these precedents, the House cannot persuasively argue that the August 29 closed meeting was a permissible closed caucus meeting.

The fact that no straw vote, or any other action was taken, does not alter this conclusion. The open meetings act is premised on the statement that the **“formation of public policy is public business and shall not be conducted in secret.”** The requirements of the act are triggered if a quorum is present and public business is discussed regardless of whether action is taken. The public is, of course, entitled to know what the final policy is, but it is *also* entitled to know what information was considered in formulating the policy and how its elected representatives voiced their concerns and positions on the policy.

As a means of remedying this violation, we propose that the House of Representatives acknowledge that it violated KRS 61.810(1) in conducting a closed meeting of a quorum of its members at which public business was discussed. In addition, we propose that the House provide the public with a copy of any written record or audio or video recording of the closed session. Finally, we propose that the House issue a resolution committing to future compliance with the requirements of the open meetings law.

Pursuant to KRS 61.846(1), we submit this written open meetings complaint to you as presiding officer of the Kentucky House of Representatives. That statute requires a final response to our complaint within three business days of receipt of the complaint. Please mail your response and any other correspondence concerning this matter to the following address rather than to the address that appears below: 322 Mallard Drive, Frankfort, KY 40601.

Sincerely,

Jim Waters, President and CEO
Bluegrass Institute

Amye Bensenhaver, Director
Center for Open Government

c: Laura Hendrix, General Counsel

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