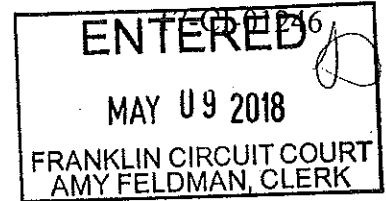


COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II



CIVIL ACTION No. 17-CI-01246

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**KENTUCKY HOUSE OF REPRESENTATIVES**

**PLAINTIFF**

vs.

**BLUEGRASS INSTITUTE FOR PUBLIC  
POLICY SOLUTIONS**

**DEFENDANT**

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**ORDER**

This matter is before the Court upon the Plaintiff, Kentucky House of Representative's *Complaint and Notice of Appeal*. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby **AFFIRMS** the November 1, 2017 Opinion of the Attorney General.

**STATEMENT OF FACTS**

On August 29, 2017, a meeting was held at the Kentucky House of Representatives ("the House"), where a quorum of members from the majority and minority parties were present for the purpose of discussing pension reform. The meeting was closed to the media and the public sans non-House members who attended as presenters. On September 6, 2017, Bluegrass Institute's Center for Open Government ("Bluegrass Institute") sent an Open Meetings complaint to then-Speaker of the House Jeff Hoover pursuant to KRS § 61.846(1) stating that the August 29, 2017 meeting consisted of a quorum of the House at which public business regarding pension reform was discussed and the meeting did not fall within one of the enumerated exceptions to the open meetings under the Act, which violated KRS § 61.810(1). KRS § 61.810(1) states, "[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.” Ky. Rev. Stat. Ann. § 61.810(1) (West 2018).

In response to Bluegrass Institute’s complaint, the House stated that it did not violate the Open Meetings Act and said that the meeting was “a meeting of the House Majority Caucus, which was open to the members of the House Minority Caucus” and was not a violation of the Act because “both entities are specifically exempt from the Open Meetings Law.” Bluegrass Institute appealed the House’s denial of its Open Meetings Complaint pursuant to KRS § 61.846(2) to the Office of the Attorney General on October 17, 2017. On November 1, 2017, the Attorney General issued 17-OMD-228 finding that “there was a quorum present and members of both the majority and minority caucuses present...the meeting was not a caucus meeting and [was] subject to the Open Meetings Act.” Additionally, the Attorney General held that there is no statutory exemption that permitted closing the August 29, 2017 meeting to the public, thus doing so violated the Act. On November 30, 2017, the House appealed the decision of the Attorney General to this Court. The standard of review for the Court for review of an open meetings appeal is *de novo*. Ky. Rev. Stat. Ann. § 61.848(3) (West 2018); *Kentucky Bd. of Exam’rs of Psychologists v. The Courier Journal & Louisville Times Co.*, 826 S.W.2d 324, 328 (Ky. 1992); *Webster Cnty. Bd. of Educ. V. Franklin*, 392 S.W.3d 431, 434-35 (Ky. Ct. App. 2013); *Bd. of Commissioners of the City of Danville v. Advocate Communications, Inc. d/b/a The Advocate Messenger*, 527 S.W.3d 803, 806 (Ky. 2017).

### ANALYSIS

The Kentucky Supreme Court held that “the formation of public policy is public business and shall not be conducted in secret.” *Carter v. Smith*, 366 S.W.3d 414, 419 (Ky. 2012) quoting Ky. Rev. Stat. Ann. § 61.800 (West 2018). “The exceptions to the Open Meetings Act provided

by KRS 61.810 must be strictly construed.” *Floyd County Bd. of Educ. v. Ratliff*, 955 S.W.2d 921, 924 (Ky. 1997); Ky. Rev. Stat. Ann. § 61.800 (West 2018). KRS 61.810 provides exceptions to the Open Meetings Act, and states in part:

(1) 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, except for the following:...

(i) Committees of the General Assembly other than standing committees.

Ky. Rev. Stat. Ann. § 61.810 (West 2018). The Court finds that the August 29, 2017 meeting was not a caucus meeting, and thus was not exempt from the Open Meetings Act. Bluegrass Institute contends that the Attorney General analyzed challenges to similar closed meetings of the House in 93-OMD-63 and 93-OMD-64. “In matters relating to open records requests, we are bound to give great weight to the Attorney General’s open record decisions.” *Cabinet for Health and Family Services v. Scorsone*, 251 S.W.3d 328, 330 (Ky. Ct. App. 2008); *York v. Commonwealth*, 815 S.W.2d 415, 417 (Ky. Ct. App. 1991). At issue in the previous cases was a closed meeting held to discuss then Governor Jones’ health care reform proposal. The Attorney General found that the House was bound by the requirements of the Open Meetings Act as a public agency. KRS 61.805(2)(b) defines public agency as “[e]very state or local legislative board, commission, and committee.” Ky. Rev. Stat. Ann. § 61.805(2)(b) (West 2018). Further, the Attorney General rejected the argument that the closed meeting was merely a “caucus” meeting. The Attorney General stated that “*Webster’s Third New International Dictionary* (1963) defines ‘caucus’...as...[a] conference of party or organization leaders to decide on policies, plans, appointees and candidates; a local or regional meeting of party members to choose candidates or delegates.” The Attorney General additionally stated that “if invitations were extended to all members, regardless of party affiliation, then, by definition, the meeting was not a caucus

meeting.” 93-OMD-63, at 2 (May 28, 1993); 93-OMD-64, at 2 (May 28, 1993). Unlike the facts in 93-OMD-63 and 93-OMD-64, it is clear that members of both the majority and minority parties attended the August 29, 2017 meeting.

The House challenges that in 94-OMD-23, the Attorney General indicated that a properly constituted caucus might qualify for exclusion from the requirement of public meetings, however, the Court finds that the August 29, 2017 meeting in question consisted of members of both parties and cannot be reasonably viewed as a caucus meeting. The House further reasons that in 05-OMD-148 the Attorney General reaffirmed a longstanding interpretation of KRS 61.815 that excluded from the Open Meetings Act’s requirements of meetings of committees of the General Assembly. Similarly, the House argues in 96-OMD-28, the Attorney General affirmed a closed meeting of the House Committee of Investigation, which had been formally constituted by House resolution as a “[c]ommittee of the General Assembly other than a standing committee.” The Court finds that neither Attorney General opinion is applicable to the case at bar. First, in 05-OMD-148, the decision of the Attorney General concerned the Louisville Arena Task Force and did not involve a decision regarding a properly constituted caucus meeting. Second, in 96-OMD-28, the Attorney General found that the House Committee of Investigation is not a standing committee of the General Assembly, but presently, the Court finds that the August 29, 2017 meeting consisted of a quorum of members of both parties, therefore 96-OMD-28 is not applicable to the case at hand.

The House asserts that the plain language of the statute makes it clear that the August 29, 2017 meeting was an exception to the Open Meetings Act and that the Attorney General incorrected identified the meeting as a meeting where “invitations were extended to all members regardless of party affiliation.” The Court finds that the August 29, 2017 meeting consisted of a public agency with a quorum of members of both majority and minority parties present and public

business was discussed. Therefore, no statutory exception exists to find the meeting was not in violation of the Open Meetings Act, and the House's failure to open the meeting to the public violated the Act.

Moreover, the House argues that legislative immunity and privilege authorized it to exclude the public from the August 29, 2017 meeting because no "statute or court rule will override the immunity provided in the Kentucky Constitution" for the Legislature. The House cites *Wiggins v. Stuart*, which states that no "Kentucky statute or court rule will override the immunity provided in the Kentucky Constitution." 671 S.W.2d 262, 264 (Ky. Ct. Appl. 1984). Additionally, the House cites *Bd. of Trustees of Judicial Form Ret. Sys. v. Attorney Gen. Of Com.*, stating that the Kentucky Supreme Court affirmed that the "review of the legislature's adherence to its own procedural rules constitutes a nonjusticiable political question solely within the legislature's province, and non-adherence to rules does not implicate constitutional rights." 132 S.W.3d 770, 777 (Ky. 2003).

Bluegrass Institute contends that the House's argument is improper and both cases cited are distinguishable to the current issue. First, Bluegrass Institute reasons that *Wiggins* is inapposite to the present case because *Wiggins* involved a declaratory judgment suit brought against members of the Kentucky legislature in their official capacity challenging legislation to increase legislative pensions. *Wiggins*, 671 S.W.2d at 264. Bluegrass Institute states that "statutory framework adopted by the General Assembly in the Open Meetings Act applies, by its own terms, to the meetings of the General Assembly unless the meeting falls within one of the statutorily proscribed exceptions." The Court agrees with Bluegrass Institute's interpretation as violations of the Open Meetings Act can be enforced by this Court.

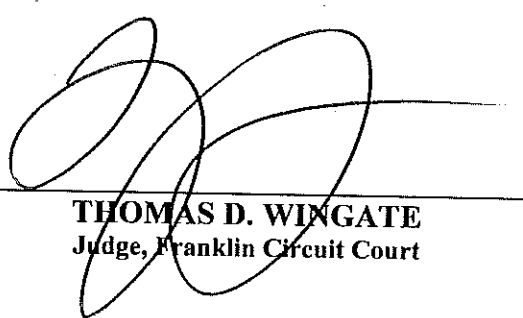
Second, Bluegrass Institute believes that the decision in *Board of Trustees* is distinguishable from the case at bar because that case involved a procedural rule impacting the

manner in which the General Assembly enacted a statute. Bluegrass Institute argues that the Open Meetings Act confers a right upon the public to observe government meetings when public business is being conducted. The Court agrees with Bluegrass Institute. KRS 61.810(1) states, "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..." Ky. Rev. Stat. Ann. § 61.810. Further KRS 61.800 states, "[t]he General Assembly finds and declares...that the formation of public policy is public business and shall not be conducted in secret at the exceptions provided for by KRS 61.810...shall be strictly construed." As previously stated, the August 29, 2017 meeting was a meeting by a public agency with a quorum of members of both the majority and minority parties present where public business was discussed. Therefore, no statutory exception exists to find the meeting was not in violation of the Open Meetings Act, and the House's failure to open the meeting to the public violated the Open Meetings Act.

**WHEREFORE**, the November 1, 2017 Opinion of the Attorney General is **AFFIRMED**.

This order is final and appealable and there is no just cause for delay.

**SO ORDERED**, this 7<sup>th</sup> day of May, 2018.



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**THOMAS D. WINGATE**  
Judge, Franklin Circuit Court

**CERTIFICATE OF SERVICE**

9 I hereby certify that a true and correct copy of the foregoing Order was mailed, this day of May, 2018, to the following:

**Hon. William E. Sharp**  
Blackburn Domene & Burchett, PLLC  
614 West Main Street, Suite 3000  
Louisville, Kentucky 40202

**Hon. Anne-Tyler Morgan**  
**Hon. Laura Hendrix**  
702 Capitol Avenue  
Frankfort, Kentucky 40601

  
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**Amy Feldman, Franklin County Circuit Court Clerk**