

Kentucky Open Meetings Law

What is the Kentucky Open Meetings law?

The Kentucky Open Meetings Act, codified as KRS 61.805—61.850, sets forth the conditions under which the public's business is to be conducted. KRS 61.800 states:

The General Assembly finds and declares that the basic policy of KRS 61.805 to 61.850 is that the formation of public policy is public business and shall not be conducted in secret and the exceptions provided for by KRS 61.810 or otherwise provided for by law shall be strictly construed.

What is a meeting under the Open Meetings law?

Meetings is broadly construed and is defined in the statute to:

(1) "Meeting" means all gatherings of every kind, including video teleconferences, regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting. *KRS 61.805(1)*.

What agencies or meetings does the Open Meetings law cover?

The law applies to "public agencies. Again the statutes provide a broad definition:

(2)(d) Every state or local government agency, including the policy-making board of an institution of education. . .

(e) Any body created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act in the legislative or executive branch of government;

(f) Any entity when the majority of its governing body is appointed by a "public agency" . . . a member or employee of a "public agency," a state or local officer, or any combination thereof; *KRS 61.805(2)*

A board of trustees or board of regents is the policy-making board.

Are groups created by the board of trustees or regents or by the administration of an institution considered to be a "public agency?"

Yes, groups created by public agencies are subject to the law.

(2)(g) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff or a committee formed for the purpose of evaluating the qualifications of public agency employees, established, created, and controlled by a "public agency". . . *KRS 61.805(2)(g)*.

Groups established by an employee of an institution rather than by the board may not be required hold open meetings.

What are the provisions of the law?

All meetings of “public agencies” are to be conducted in open session unless they fit within one of the statutory exceptions. All meetings must be scheduled at specified times and places which are convenient to the public. Notice must be given of regularly scheduled and special meetings. Minutes of meetings shall be taken and the actions recorded. No conditions for attendance may be required other than those required for the maintenance of order.

What are the exceptions to the Open Meetings law?

There are seven exceptions with relevance for postsecondary education:

- (b) Deliberations on the future acquisition of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency;
- (c) Discussions of proposed or pending litigation against or on behalf of the public agency;
- (e) Collective bargaining negotiations between public employers and their employees or their representatives;
- (f) Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student without restricting that employee’s member’s, or student’s right to a public hearing if requested. This exception shall not be interpreted to permit discussion of general personnel matters in secret;
- (g) Discussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business;
- (h) State and local cabinet meetings and executive cabinet meetings;
- (k) Meetings which federal or state law specifically require to be conducted in privacy;
KRS 61.810(1)

A series of meetings of less than a quorum where the members attending one or more of the meetings constitute a quorum and where the meetings are held for the purpose of avoiding the requirements of the open meetings law must be open. However, nothing in the statute prohibits discussion between individual members where the purpose is to educate themselves on specific issues.

What are the requirements for closing a meeting to the public?

Notice must be given in open session of the nature of the business, the reason for the closed session and the specific statutory exception. A majority of the board must approve the closed session. No final action may be taken in closed session. No matters may be discussed at a closed session other than those publicly announced.

How is the Open Meetings law enforced?

A person believing there is a violation of the law must first appeal in writing to the presiding officer of the “public agency.” The agency has three working days to respond to the complaint. The response must be in writing and if the response is to deny the complaint, the agency response must contain a statement of the specific statute relied upon and provide a brief explanation.

A person receiving a denial has sixty days to appeal the decision to the Attorney General. A written response is due from the Attorney General within ten working days.

If the Attorney General rules in favor of the complainant, and, if the complainant is not satisfied with the remedy provided by the public agency, the complainant has thirty days to appeal. A decision by the Attorney General has the force and effect of law and is enforceable in the Circuit Court of the County where the “public agency” has its principal place of business or where the alleged violation occurs.

An agency must inform the Attorney General of any actions filed against that agency in Circuit Court regarding enforcement of the Open Meetings law.

The Circuit Court has jurisdiction to enforce the provisions of the Open Meetings law. A complainant does not have to exhaust all administrative remedies but must file suit within sixty days of receiving notice of a denial by the agency or by the Attorney General.

Actions of the “public agency” that are without substantial compliance with the Open Meetings law are voidable by the court.

If a person prevails against an agency, where the action is considered willful, may be awarded fees and costs. Additionally, the court may fine the “public agency” \$100 for each violation.