

1 AN ACT relating to open meetings.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 61.846 is amended to read as follows:

- 4 (1) If a person enforces KRS 61.805 to 61.850 pursuant to this section, he shall begin
5 enforcement under this subsection before proceeding to enforcement under
6 subsection (2) of this section. The person shall submit a written complaint to the
7 presiding officer of the public agency suspected of the violation of KRS 61.805 to
8 61.850. The complaint shall state the circumstances which constitute an alleged
9 violation of KRS 61.805 to 61.850 and shall state what the public agency should do
10 to remedy the alleged violation. The public agency shall determine within three (3)
11 days, excepting Saturdays, Sundays, and legal holidays, after the receipt of the
12 complaint whether to remedy the alleged violation pursuant to the complaint and
13 shall notify in writing the person making the complaint, within the three (3) day
14 period, of its decision. If the public agency makes efforts to remedy the alleged
15 violation pursuant to the complaint, efforts to remedy the alleged violation shall not
16 be admissible as evidence of wrongdoing in an administrative or judicial
17 proceeding. An agency's response denying, in whole or in part, the complaint's
18 requirements for remedying the alleged violation shall include a statement of the
19 specific statute or statutes supporting the public agency's denial and a brief
20 explanation of how the statute or statutes apply. The response shall be issued by the
21 presiding officer, or under his authority, and shall constitute final agency action.
- 22 (2) If a complaining party wishes the Attorney General to review a public agency's
23 denial, the complaining party shall forward to the Attorney General a copy of the
24 written complaint and a copy of the written denial within sixty (60) days from
25 receipt by that party of the written denial. If the public agency refuses to provide a
26 written denial, a complaining party shall provide a copy of the written complaint
27 within sixty (60) days from the date the written complaint was submitted to the

1 presiding officer of the public agency. The Attorney General shall review the
2 complaint and denial and issue within ten (10) days, excepting Saturdays, Sundays,
3 and legal holidays, a written decision which states whether the agency violated the
4 provisions of KRS 61.805 to 61.850. In arriving at the decision, the Attorney
5 General may request additional documentation from the agency. On the day that the
6 Attorney General renders his decision, he shall mail a copy to the agency and a copy
7 to the person who filed the complaint.

8 (3) (a) If a public agency agrees to remedy an alleged violation pursuant to subsection
9 (1) of this section, and the person who submitted the written complaint
10 pursuant to subsection (1) of this section believes that the agency's efforts in
11 this regard are inadequate, the person may complain to the Attorney General.

12 (b) The person shall provide to the Attorney General:

- 13 1. The complaint submitted to the public agency;
- 14 2. The public agency's response; and
- 15 3. A written statement of how the public agency has failed to remedy the
16 alleged violation.

17 (c) The adjudicatory process set forth in subsection (2) of this section shall
18 govern as if the public agency had denied the original complaint.

19 (4) **If the agency or the Attorney General finds that the agency failed to give notice of**
20 **the meeting in question as required by KRS 61.820 and 61.823, the agency or the**
21 **Attorney General may declare all action taken at that meeting to be vacated.**

22 (5)(a) A party shall have thirty (30) days from the day that the Attorney General
23 renders his decision to appeal the decision. An appeal within the thirty (30)
24 day time limit shall be treated as if it were an action brought under KRS
25 61.848.

26 (b) If an appeal is not filed within the thirty (30) day time limit, the Attorney
27 General's decision, as to whether the agency violated the provisions of KRS

1 61.805 to 61.850, shall have the force and effect of law and shall be
2 enforceable in the Circuit Court of the county where the public agency has its
3 principal place of business or where the alleged violation occurred.

4 ~~(6)~~~~(5)~~ A public agency shall notify the Attorney General of any actions filed against
5 that agency in Circuit Court regarding enforcement of KRS 61.805 to 61.850.

6 ➔Section 2. KRS 61.848 is amended to read as follows:

7 (1) The Circuit Court of the county where the public agency has its principal place of
8 business or where the alleged violation occurred shall have jurisdiction to enforce
9 the provisions of KRS 61.805 to 61.850, as they pertain to that public agency, by
10 injunction or other appropriate order on application of any person.

11 (2) A person alleging a violation of the provisions of KRS 61.805 to 61.850 shall not
12 have to exhaust his remedies under KRS 61.846 before filing suit in a Circuit Court.
13 However, he shall file suit within sixty (60) days from his receipt of the written
14 denial referred to in subsections (1) and (2) of KRS 61.846 or, if the public agency
15 refuses to provide a written denial, within sixty (60) days from the date the written
16 complaint was submitted to the presiding officer of the public agency.

17 (3) In an appeal of an Attorney General's decision, where the appeal is properly filed
18 pursuant to subsection ~~(5)~~~~(4)~~(a) of KRS 61.846, the court shall determine the
19 matter de novo.

20 (4) Except as otherwise provided by law or rule of court, proceedings arising under this
21 section take precedence on the docket over all other causes and shall be assigned for
22 hearing and trial at the earliest practicable date.

23 (5) Any rule, resolution, regulation, ordinance, or other formal action of a public
24 agency without substantial compliance with the requirements of KRS 61.810,
25 61.815, 61.820, and KRS 61.823 shall be voidable by a court of competent
26 jurisdiction.

27 (6) ***If*** any person ~~who~~ prevails against any agency in any action in the courts

1 regarding a violation of KRS 61.805 to 61.850;

2 (a) ~~[,]~~Where the violation is found to be willful, ***the person*** may be awarded
3 costs, including reasonable attorneys' fees, incurred in connection with the
4 legal action;

5 (b) ***The person may be awarded an amount***~~[. In addition, it shall be within the
6 discretion of the court to award the person an amount]~~not to exceed one
7 hundred dollars (\$100) for each instance in which the court finds a violation;

8 (c) ***If the court finds that there was no justiciable reason for the agency's
9 denial of an open meetings complaint, the person shall be awarded costs,
10 including reasonable attorneys' fees, incurred in connection with the legal
11 action; and***

12 (d) ***If the court finds that the agency failed to give notice of the meeting as
13 required by KRS 61.820 and 61.823, the court may vacate all action taken at
14 that meeting.***

15 Attorneys' fees, costs, and awards under this subsection shall be paid by the agency
16 responsible for the violation.