


January 25, 1995

M E M O R A N D U M

To: Chancellors, Vice Presidents, Deans, Directors, Department Chairs
Chairs of University Committees
Members of the University Senate
Faculty Members
Staff

From: Charles T. Wethington, Jr., President 

Re: Compliance with Open Meetings Law, Open Records Law, State Archives
and Records Law

This memorandum will serve as a reminder to the University community about our responsibilities to comply with the Open Meetings Law, the Open Records Law, and the State Archives and Records Law. Each of these laws applies to the University of Kentucky in various and interrelated ways. Following are brief summaries of these laws and guidance for compliance. Each University employee should be aware of the existence of these statutes and their application to his or her duties. Supervisory personnel should be consulted for necessary guidance in applying the laws to specific situations. While this memorandum is intended to be an accurate summary of these laws as they apply to the University, it should be remembered that application can be complex and that care should be taken to seek appropriate guidance when necessary.

STATE ARCHIVES AND RECORDS ACT

The State Archives and Records Law deals with the preservation and management of state agency records. The provisions of the act are contained in KRS 171.410 - 171.990 and are supplemented by regulations issued by the Kentucky Department of Libraries and Archives.

The statute provides that the University must make and preserve records containing adequate and proper documentation of the "organizational functions, policies, decisions, procedures, and essential transactions" of the

MEMORANDUM

Re: Compliance with Records and Meetings Laws

January 25, 1995

Page 2

University. Records must be kept to furnish sufficient information to protect the legal and financial rights of the University and those persons directly affected by the University's activities. Application of this statutory mandate must be made on a case-by-case basis. Each faculty and staff member should consider it his or her duty to assure that appropriate records are kept to meet this statutory mandate and should consult with his or her immediate supervisor or department chair to ascertain the scope of appropriate records that should be maintained under the circumstances. University personnel charged with creating records should make sure that records are filed promptly and appropriately (usually in the departmental or dean's office for academic units, the Senate Council office for Senate Committees, and the appropriate administrative office for support units).

The statute and the regulations issued by the Department of Libraries and Archives also require that University records not be destroyed except in accordance with the law. Each campus unit currently has an approved Records Retention Schedule, which specifies the retention period for each category of records that are maintained by the unit. Retention periods range from "permanent" to "indefinite--destroy when no longer needed." Any destruction of University records must be accomplished in accordance with the applicable Records Retention Schedule, and with the prior written approval of Dr. Terry Birdwhistell, the University's designated records compliance officer. Questions concerning destruction of records or relating to other issues of records storage and archiving should be directed to unit administrators or Dr. Birdwhistell at 257-1466.

The University will undertake this semester a comprehensive review of its Records Retention Schedules in light of a new State University Model Records Retention Schedule suggested for adoption by the Department of Libraries and Archives. Adoption of this suggested model schedule may simplify our records management by reducing the number of Records Retention Schedules applicable to University units.

The Archives and Records statute also requires that officials and employees of each state agency be informed (1) that "no records are to be alienated or destroyed except in accordance with law" and (2) that persons knowingly violating this law are subject to prosecution for a Class A misdemeanor, liability for damages or losses incurred by the University, and dismissal from state employment "upon a determination of fact, at a hearing, that a serious violation did occur."

OPEN MEETINGS ACT

The Open Meetings Act applies to meetings of members of public agencies. Because of the complex nature of the University and the multiple exceptions to the Act, the applicability of the Open Meetings Law to each meeting of University groups cannot be set out with certainty. Whether the Act applies to a meeting of University personnel depends on whether they legally are members of a public agency at the time they are meeting, as well as whether they are at the time transacting public business.

MEMORANDUM

Re: Compliance with Records and Meetings Laws

January 25, 1995

Page 3

Because of the uncertainty generated by the application of the law to University bodies, the University of Kentucky in conjunction with the University of Louisville requested an Attorney General Opinion regarding the application of the Open Meetings Law to various university groups. The guidance received from the Attorney General is summarized below.

The Attorney General premised his Opinion on the purpose of the Open Meetings Law: "to provide public access to meetings of decision-making bodies." (Emphasis added) He stated that the Act "is not intended to provide public access to the day-to-day administrative work of a public agency."

The Open Meetings Law, codified in KRS 61.805 - 61.850, applies only to meetings of "public agencies." The Board of Trustees of the University is clearly such a public agency. The statute also provides that any "committee, subcommittee, ad hoc committee, advisory committee, [or] council" of a public agency is also itself a public agency subject to the Act. The Attorney General pointed out, however, that there is no guidance in the statute concerning the extent to which the Open Meetings Law "reaches down through layers of administrative organization to affect the day-to-day administrative work of employees." He further pointed out that "logic and common sense demand that a certain level of subdelegation be reached at which work is being done that is too remote from the decision-making process to invoke the public interest secured by the open meetings law."

The Attorney General devised the following practical definition to determine whether a University body meets the definition of public agency: "A group of persons acting as a unit, to whom there has been officially delegated the responsibility to consider, investigate, take action on, or report on specific matters entrusted to it." (Emphasis added) The Attorney General used this definition to determine that the meetings of the University Senate and meetings of college and department faculty held to act collectively on items delegated to faculty by the Governing Regulations are subject to the Open Meetings Law.

The Opinion, however, concluded that "it does not follow that every congregation of employees who are members of those bodies must be an open meeting. The law applies only to meetings at which public business is discussed or action is taken. If a meeting is contemplated or scheduled at which neither action will be taken nor public business discussed, the meeting need not be open to the public."

The Attorney General defined "public business" as:

- the expenditure of public funds;
- the scope of services offered by the University;
- regulations, policies or procedures that affect the manner in which the University provides services to the public or complies with its statutory duties;

MEMORANDUM

Re: Compliance with Records and Meetings Laws

January 25, 1995

Page 4

-- personnel matters affecting the compensation, benefits or duties of public employees.

The Attorney General stated that the following are probably not public business:

-- matters related to a specific situation involving a particular student, employee, faculty member or member of the public;

-- casual conversations among faculty or senate members;

-- matters that are purely internal to the faculty or senate itself, except matters involving the time or place of meetings.

The Open Meetings Act specifically exempts from the definition of public agency and thus from the provisions of the Act "a committee of a hospital medical staff or a committee formed for the purpose of evaluating the qualifications of public agency employees." Accordingly, meetings of hospital peer review committees, departmental and college promotion and tenure committees, or Academic Area Advisory Committees are not subject to the Open Meetings Act.

A determination that a University body is subject to the Open Meetings Act does not automatically mean that the full meeting must be open to the public. The Act, for example, allows portions of an otherwise public meeting to be closed to the public in the following circumstances:

-- for discussions of proposed or pending litigation;

-- for discussions or hearings that might lead to the appointment, discipline, or dismissal of an individual employee or student;

-- for "cabinet meetings" (i.e., meetings of administrators, such as chancellor and deans, dean and department chairs, etc.);

-- meetings that federal or state law specifically require to be conducted in privacy.

"Closing" a Meeting In order to "close" an otherwise open session, notice must be given in the open portion of the meeting of the general nature of the business to be discussed, the reason for the closed session, and the specific provision of the law authorizing the closed session (see Exhibit A, KRS 61.810), a motion must be made and carried by majority vote to go into closed session; no final action may be taken in closed session. (Note: this procedure is not required for meetings of administrators or student-related hearings.)

Compliance with the Open Meetings Law If a University body is subject to the law, it must provide a schedule of regular meetings, and make

MEMORANDUM

Re: Compliance with Records and Meetings Laws

January 25, 1995

Page 5

that schedule available to the public (for instance by posting on the college or departmental bulletin board). In order to hold a special meeting (one held at other than the regular time), the provisions of KRS 61.823 (see Exhibit B) must be followed. Minutes of "action taken" must be kept for all meetings of bodies subject to the Open Meetings Act.

Questions concerning application of the Open Meetings Law should be directed through administrative channels to the Chancellors' offices. Chancellors should consult with the University's Office of Legal Counsel when necessary.

OPEN RECORDS ACT

Because it is a state agency, all records of the University of Kentucky are classified as "public records," and thus are subject to inspection pursuant to the terms of the Open Records Act unless a specific exemption in the Act applies, as explained below. The provisions of the Act are contained in KRS 61.870 - 61.884.

University employees, of course, have complete access to their own faculty and staff personnel files in departmental or college offices or at Employee Records Office. No formal request need be made by a University employee through the Open Records process to access his or her file.

Normally, University employees need not make Open Records requests to obtain records directly related to job assignments. Thus, supervisory personnel should be consulted before requiring any University employee to file a formal open records request for University records.

Formal Open Records requests are submitted on special forms and are handled university-wide by the Open Records Office, which reports to the Official Custodian of University Records, George DeBin, Assistant to the President for Fiscal Affairs. Ms. Kay Mobley staffs the office and processes Open Records requests, working with appropriate University units to retrieve records. All units must cooperate with the Open Records Office to fulfill the University's statutory mandate to provide records to the public in a timely and organized manner.

Ms. Mobley is located in Room 11 of the Administration Building and may be reached at 257-2936. Units should immediately direct correspondence from persons concerning "Open Records" to Ms. Mobley.

University records are released upon written request unless the Official Custodian determines that an exemption to the Open Records Act should be applied. The following types of records are generally exempt under the law and are not disclosed except upon order of the Attorney General or a court:

MEMORANDUM

Re: Compliance with Records and Meetings Laws

January 25, 1995

Page 6

-- Records which are of a personal nature and the disclosure of which would be a clearly unwarranted invasion of personal privacy. Examples are medical records, an employee's Social Security number, date of birth, home address and phone number, marital status, payroll benefits deductions, employee evaluations, etc.

-- Records confidentially disclosed to an agency and compiled and maintained for scientific research.

-- Test questions, scoring keys, and other examination data.

-- Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of the University of Kentucky.

-- Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.

-- All records or information the disclosure of which is prohibited by state or federal law or regulation. Example: student records or information protected from disclosure by the Family Educational Rights and Privacy Act (the "Buckley Amendment").

Provisions of the Open Records Law give University employees the right to inspect University records that are "related to" them, even though such records may be preliminary in nature or subject to other exemptions. This right of inspection would include the following--work plans, job performance, demotions, evaluations, promotions, compensation, transfers, layoffs, disciplinary actions, examination scores and preliminary or other supporting documentation. Members of committees that consider matters involving individual faculty members or employees should be aware that personal notes taken by them may be obtained by affected faculty members or employees under this provision. All employees should be aware that letters of evaluation or recommendation concerning individual faculty or employees may be obtained by affected faculty or employees under this provision.

Questions about the application of the Open Records Law to particular types of University records may be directed to Ms. Mobley or Mr. DeBin.

cc: Assistant Attorney General T. Ross Carter
Assistant Attorney General Amye B. Majors
James A. Nelson, Chairman, State Archives and Records Commission
Richard Belding, State Archivist and Records Administrator

5772L

EXHIBIT A

61.810. Exceptions to open meetings. — (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:

- (a) Deliberations for decisions of the Kentucky Parole Board;
- (b) Deliberations on the future acquisition or sale 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;
- (d) Grand and petit jury sessions;
- (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;
- (i) Committees of the General Assembly other than standing committees;
- (j) Deliberations of judicial or quasi-judicial bodies regarding individual adjudications or appointments, at which neither the person involved, his representatives, nor any other individual not a member of the agency's governing body or staff is present, but not including any meetings of planning commissions, zoning commissions, or boards of adjustment;
- (k) Meetings which federal or state law specifically require to be conducted in privacy; and
- (l) Meetings which the Constitution provides shall be held in secret.

(2) 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. 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. (Enact. Acts 1974, ch. 377, § 2; 1992, ch. 162, § 3, effective July 14, 1992.)

EXHIBIT B

61.823. Special meetings — Emergency meetings. — (1) Except as provided in subsection (5) of this section, special meetings shall be held in accordance with the provisions of subsections (2), (3), and (4) of this section.

(2) The presiding officer or a majority of the members of the public agency may call a special meeting.

(3) The public agency shall provide written notice of the special meeting. The notice shall consist of the date, time, and place of the special meeting and the agenda. Discussions and action at the meeting shall be limited to items listed on the agenda in the notice.

(4)(a) As soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to every member of the public agency as well as each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting. The public agency may periodically, but no more often than once in a calendar year, inform media organizations that they will have to submit a new written request or no longer receive written notice of special meetings until a new written request is filed.

(b) As soon as possible, written notice shall also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building which houses the headquarters of the agency. The notice shall be calculated so that it shall be posted at least twenty-four (24) hours before the special meeting.

(5) In the case of an emergency which prevents compliance with subsections (3) and (4) of this section, this subsection shall govern a public agency's conduct of a special meeting. The special meeting shall be called pursuant to subsection (2) of this section. The public agency shall make a reasonable effort, under emergency circumstances, to notify the members of the agency, media organizations which have filed a written request pursuant to subsection (4)(a) of this section, and the public of the emergency meeting. At the beginning of the emergency meeting, the person chairing the meeting shall briefly describe for the record the emergency circumstances preventing compliance with subsections (3) and (4) of this section. These comments shall appear in the minutes. Discussions and action at the emergency meeting shall be limited to the emergency for which the meeting is called. (Enact. Acts 1992, ch. 162, § 6, effective July 14, 1992.)