

# UNIVERSITY OF KENTUCKY

## OFFICE OF LEGAL COUNSEL

Central Campus Office  
2 Administration Building  
University of Kentucky  
Lexington, Kentucky 40506-0032  
Phone: (606) 257-2936  
FAX: (606) 323-1062

Medical Center Office  
A-301 Kentucky Clinic  
University of Kentucky  
Lexington, Kentucky 40536-0284  
Phone: (606) 323-1161  
FAX: (606) 323-1918

### M E M O R A N D U M

To: Chancellors, Vice Presidents, Deans, and  
Community College Presidents

From: Richard E. Plymale, General Counsel *REP*

Re: **Open Meetings Law Applied to Search Committees and  
Tenured Faculty Meetings**

Date: October 19, 1995

I have been asked to provide some general guidance to University administrators and faculty regarding application of the Open Meetings Law to

- 1) meetings of search committees of academic units for faculty positions and
- 2) meetings of the tenured faculty of a unit, which some units hold to consider promotion and tenure cases.

Search Committees: Search committees that are mandated by Governing Regulation VIII-3 (chief administrative officers of all educational units) are subject to the Open Meetings Law. As such Committees are appointed, the appointing official should provide to the chairperson of the Committee materials that my office will prepare relating to compliance with applicable provisions of the law. This does not mean that the deliberations of these committees must necessarily be open to the public. As many of you may be aware, meetings of public bodies subject to the Open Meetings Law may be closed to the public for those portions of a meeting when discussions are held that might lead to the appointment of a potential employee. Those portions of the meetings of these search committees that deal with more general personnel matters must be open.

For search committees established or appointed by colleges or departments to screen, interview, and recommend regarding appointment of individual faculty, the Open Meetings Law does not apply to these committees under the rationale set out in Attorney General Opinion 94-25.

In that Opinion, the Attorney General advised the University that not every "congregation of employees" who were members of a college or department must be an open meeting, and that the Open Meetings Law only applies where "public business" is discussed. The Attorney General specifically stated that he did not think that "matters relating to a specific situation involving a particular student, employee, [or] faculty . . . member" would constitute public business under the Law. In that Opinion, the Attorney General ruled specifically that meetings of college faculties, departments, and the University Senate were subject to the Open Meetings Law; however, he further

explained that "logic and common sense demand that a certain level of subdelegation be reached at which the work being done is too remote from the decision-making process to invoke the public interest secured by the open meetings law."

Meetings of Tenured Faculty: Meetings of the tenured faculty of a college or department, when convened for the purpose of discussing the promotion or tenure of an individual candidate, are exempt from the Open Meetings Law under the provisions of KRS 61.805(g). That exception to the law states in essence that meetings that are held for the purpose of evaluating public agency employees are exempt from the Open Meetings Law.

I hope that this information has been helpful to you in clearing up any misunderstandings regarding the Open Meetings Law that may have existed. If you have any questions about these matters, I suggest that you raise them with your immediate superior, and I will ask the Chancellors and Vice Presidents to work with the Office of Legal Counsel so that interpretations of the Open Meetings Law are consistent across sectors.

**DEAN SEARCH COMMITTEES  
PROCEDURES AND LAWS FOR CONDUCTING SESSIONS  
PURSUANT TO  
THE OPEN MEETINGS LAW**

Dean Search Committees are subject to Kentucky's Open Meetings Act. As guidance to the Chair and Committee members, the applicable provisions of the Open Meetings Act are listed below. The most relevant sections of the statute applicable to Search Committees are as highlighted.

**61.820 SCHEDULE OF REGULAR MEETINGS TO BE MADE AVAILABLE**

All meetings of all public agencies of this state, and any committees or subcommittees thereof, shall be held at specified times and places which are convenient to the public, and all public agencies shall provide for a schedule of regular meetings by ordinance, order, resolution, bylaws, or by whatever other means may be required for the conduct of business of that public agency. The schedule of regular meetings shall be made available to the public.

**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.

**61.835 MINUTES TO BE RECORDED; OPEN TO PUBLIC**

The minutes of action taken at every meeting of any such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded and such records shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body.

#### **61.815 REQUIREMENTS FOR CONDUCTING CLOSED SESSIONS**

(1) Except as provided in subsection (2) of this section, the following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:

(a) Notice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session;

(b) Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session;

(c) No final action may be taken at a closed session; and

(d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.

Notice of Meetings. The first statutes listed above set out the provisions of required notice about Committee meetings. Most search committees will have more “special meetings” than regular meetings, and some search committees may not be able to set a “regular meeting” schedule. Follow the notice provisions with specificity on calling special meetings.

Closing Otherwise Open Meetings. If after a meeting is convened, the Search Committee decides that it wants to go into “closed” or “executive” session to discuss a particular candidate or candidates under consideration, these procedures need to be followed:

1. Notice must be given in open session of the general nature of the business to be discussed in the closed session. Example: to discuss the qualifications of specific individuals being considered for the deanship.

2. The reason for the closed session must be given: for example, to protect the confidentiality of those being preliminarily considered and to allow full discussion among the committee members about the candidates.

3. Announce the specific provision under the Open Meetings Act which authorizes the closed session: KRS 61.810(1)(j), which states that meetings may be closed where there are “discussions . . . which might lead to the appointment. . . of an individual employee . . .”

Note: this exception is not to be interpreted to permit discussion of general personnel matters in secret or discuss other general matters relating to the search in secret.

4. A motion must be made and carried by majority vote of the Committee to go into closed session. The motion may be something like: “I move that the Search Committee go into closed session to discuss individual candidates for the deanship in order to allow full discussion and to protect the privacy interests of those being discussed. KRS 61.810(1)(j) authorizes the closing of the meeting.” This motion should meet the requirements of 1, 2, and 3 above.

5. No “final action” of the Committee may be taken at a closed session.

6. No matters may be discussed at a closed session other than those publicly announced prior to the convening the closed session.

Search Committee chairpersons having questions should feel free to contact Paul Van Booven at the Legal Office for further advice. His phone number is 257-2936.

PVB:Open Meetings:Dean Search  
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