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April 1, 2013

Via facsimile 502.564.2894 & U.S. Mail

Office of the Attorney General 700 Capitol Avenue Capitol Building, Suite 118 Frankfort, Kentucky 40601

Re: Open Meetings Appeal

Dear Sir or Madam:

I am appealing the denial of my complaint under the Kentucky Open Meetings Act by Dr. Constantine Curris, Chair of the Murray State University Board of Regents, concerning a closed and secret meeting of a quorum of the Board on the evening of Thursday, March 14, 2013. I am enclosing a copy of my complaint as well as a copy of the response sent on behalf of the Chair.

As you know, KRS 61.805(1) defines what a "meeting" is under the Act, and prohibits the meeting of a quorum of a public body to discuss public business in secret. Specifically, the Act states: "'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".

The response does not address the violation of the Open Meetings Act by a quorum of the Board on Thursday, March 14, 2013. Of note, the response declines to find that any items acted upon at the public meeting of the full Board on March 15, 2013 that were discussed at the secret meeting by a quorum of the Board on March 14, are null and void. A factual dispute concerning the secret meeting's relationship to the public meeting does exist. I recognize, however, that this factual dispute is beyond the scope of the review by the Attorney General, so a limited review and decision is sought finding that the secret meeting of a quorum of the Board of Regents of Murray State University on Thursday March 14, 2013, was in violation of Kentucky's Open Meetings Act. See, e.g., Ky. Op. Atty. Gen. 08-OMD-012 (Ky. Atty. Gen. 2008) ("this office is not statutorily authorized to declare void actions taken at a meeting that was improperly held or

Office of the Attorney General April 1, 2013 Page - 2 -

impose penalties for violations of the Act"). Your office need not address the actions of the Board on March 15, 2013, which should expedite the decision regarding the secret meeting of March 14, 2013.

Thank you for your prompt attention to this matter. With kind regards, I remain

Very truly yours,

James L. Deckard

c: Hon. John Rall (with attachments) via email <u>jrall@murraystate.edu</u> & U.S. Mail

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March 21, 2013

Via facsimile (270) 809-3413 & U.S. Mail

Constantine W. Curris, Chair Murray State University Board of Regents 102 Curris Center Murray, Kentucky 42071

Re: Open Meetings Complaint

Dear Chairman Curris:

I am writing to you in your capacity as chair of the Murray State University Board of Regents ("the Board") and submit this Complaint concerning the meeting that was held on the evening of Thursday, March 14, 2013, at the home of Board Regent Sharon Green. According to news reports, at that meeting a quorum of the Board was present and Board business was discussed in violation of KRS Chapter 61.800, et seq, Kentucky's Open Meetings Act. Kentucky law prohibits the Board from discussing Murray State University business at such a meeting and further prohibits the Board from meeting without notice to the public.

I am requesting that the Board discuss at a future meeting, in an open and public session, those matters that were discussed at the meeting on March 14, 2013 at the home of Board Regent Sharon Green. Any action taken by the Board as a result of that unlawful meeting must be declared null and void. In accord with KRS 61.846, a response to this Complaint indicating whether you will correct this violation is required within three (3) business days. If you deny that a violation of Kentucky's Open Meetings Act occurred, you must state in writing the Kentucky statute that authorized your actions and the reasoning behind why the meeting of March 14, 2013 at the home of Board Regent Sharon Green was lawful. With kind regards,

Very truly yours,

James L. Deckard



John P. Rall, General Counsel 100 Pogue Library, Murray, KY 42071-3308 Phone (270) 809-3399 Fax (270) 809-3471

March 28, 2013

Via Email: jdeckard@hem-law.com

Mr. Jim Deckard Hurt, Crosbie, and May LLC The Equus Building 127 West Main Street Lexington, KY 40507

Re: Open Meetings Complaint

Dear Mr. Deckard:

Your letter of March 21, 2013 to Dr. Constantine Curris, Chair of the Board of Regents of Murray State University, was sent via facsimile to the University. Murray State was closed for business and re-opened on March 25, at which time the letter was received. I have been asked to respond.

The inquiry revolves around an informal social gathering on the evening of March 14.

You request that the Board "discuss at a future meeting, in an open and public session, those matters that were discussed..." on the evening of the 14th. Dr. Curris is glad, at an up-coming meeting of the Board of Regents, publicly to address conversations at the March 14 social gathering.

You ask that "any action taken by the Board as a result of that illegal meeting must be declared null and void." It is understood that your letter is concerned with the vote on the extension of the contract of the University President,

A motion to extend the contract was made on March 15th in open session during the Board's regular quarterly meeting; the motion was unsuccessful. The decision to solicit such a motion on the 15th was not the result of any collective decision made at the March 14th social. In fact, the motion to bring the contract extension before the Board was made by a Regent who was not present at the gathering. In addition, there was no discussion on the 14th of how any vote should or would be cast, no attempt to persuade anyone to change a vote, and no type of straw vote.

Consequently, your second proposed remedy must be denied. The suggested remedy requires that action taken on the 15th be "as a result" of the gathering on the 14th. That condition is absent

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here. Similarly, the Board complied with the requirements of the Open Meetings Act in its actions on March 15. See, e.g. KRS 61.810(1); 61.848(5).

Sincerely,

John P. Rall General Counsel

JPR/sb

cc: Dr. Constantine Curris (via email)