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Joni L. Jenkins
Minority Whip

February 4, 2019

Mr. Leonard Whalen, Superintendent
Dawson Springs Independent School District
118 E. Arcadia Avenue
Dawson Springs, KY 42408

Dear Superintendent Whalen:

The Office of Education Accountability has issued a final report regarding our investigation of allegations of wrongdoing in the Dawson Springs Independent School District. A copy of the final report is enclosed.

Sincerely,

David Wickersham, LRC Deputy Director
for the Office of Education Accountability

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MEMORANDUM

TO: MR. LEONARD WHALEN, SUPERINTENDENT
DAWSON SPRINGS INDEPENDENT SCHOOL DISTRICT

FROM: DAVID WICKERSHAM, LRC DEPUTY DIRECTOR
FOR THE OFFICE OF EDUCATION ACCOUNTABILITY

DATE: FEBRUARY 4, 2019

SUBJECT: FINAL INVESTIGATIVE REPORT

The Office of Education Accountability (OEA) has completed an investigation of allegations of wrongdoing in the Dawson Springs Independent School District. Kentucky law empowers OEA to investigate complaints alleging violations of education statutes and regulations.

OEA staff visited the district and interviewed school district personnel on October 23, 2018. OEA also obtained documents. The following represents OEA's **ALLEGATIONS, FINDINGS, CONCLUSIONS, and RESOLUTIONS.**

ALLEGATION #1: Excessive spending and irregularities in real estate acquisition by the district.

FINDINGS

On or about June 20, 2018 Superintendent Leonard Whalen was made aware that the property directly across the street from Dawson Springs High School was going

to be auctioned by the out-of-state bank that had foreclosed on the property. The auction was to take place on-line on Realtybid.com. Realtybid.com operates by accepting live on-line bids during a well-defined window of time.

Mr. Whalen notified the Dawson Springs Independent Board of Education on June 20 or 21, 2018. It was well known that the board had tried unsuccessfully in the past to buy the property to alleviate traffic and parking problems at the high school. On June 22, 2018 Mr. Whalen consulted with Greg Dunbar of the Office of Finance and Operations, Division of District Support in the Kentucky Department of Education (KDE). Mr. Whalen sought guidance as to the proper procedure for buying the property. Mr. Dunbar advised that the board could make the purchase and worked with Mr. Whalen on the correct procedure per statutes and regulations.

On June 25, 2018 the board conducted its' regularly scheduled meeting. During the meeting, the board entered closed executive session and authorized Mr. Whalen to bid on the property at auction including agreeing on a maximum bid amount of \$35,000. Sometime before the meeting, the board had consulted with the board attorney as to whether they could go into closed session to discuss the auction in order to protect their bidding strategy. The concern was that if mention was made of bidding on a property, even without mentioning the bid price, that someone could drive up the price or out-bid the board and then offer to sell it to the board at a profit. The board attorney indicated that, pursuant to the exceptions to the Open Meetings Act contained in KRS 61.810, the board could discuss the auction in closed session.

On June 27, 2018 the on-line auction took place. During the auction window, Mr. Whalen and the board chair sat in front of the computer and entered bids. There seemed to be one other bidder. No bids were accepted until the price reached the minimum value of \$15,000. After that point, the bidding proceeded up to \$18,750, the winning bid by the Dawson Springs Independent School District. The property had been assessed by the Property Valuation Administrator at a value of \$83,500.

The district closed on the property on July 20, 2018. Emails confirm that KDE was apprised of all necessary activity throughout the bidding and purchase of the property and all necessary documentation was completed pursuant to KDE's instructions.

CONCLUSIONS

There are two issues that require examination related to the allegation of irregularities and excessive spending in the acquisition of real property by the Dawson Springs Independent School District. First, did the district follow the correct procedure for the purchase of real property, and second, did the board violate the Open Meetings Act by discussing the purchase of real property in closed session.

The relevant legal provision in this matter related to the procedure for the purchase of real property is 702 KAR 4:050, Section 2, which states:

The chief state school officer shall cause an inspection to be made of each proposed school building site or proposed real property acquisition including site addition upon written request of the local board of education. Site approval shall be given by the chief state school officer prior to any purchase or commitment to purchase, except that an option-to-purchase which in no way obligates purchaser, may be executed to assure availability of site during this approval procedure. All school sites shall be in agreement with the current school facilities plan except that a local board of education may request approval of the chief state school officer to acquire a school site in a rapidly growing area where the existing school cannot accommodate the increased student population and a new school may be proposed in a future facility plan by the Department of Education. However, no site preparation or construction shall take place prior to the time the proposed new school is a part of the facility plan. The site shall have the approval of the chief state school officer prior to initiation of an application for approval of a construction project.

702 KAR 4:050 is written to apply to the process of acquiring land for future construction. As noted above, the particulars in this instance are clearly different

than what one would encounter in the process of acquiring land for future construction. However, the spirit, if not the letter, of 702 KAR 4:050 would apply as there is no other statute or regulation that governs this situation.

Here there was a limited window of time in which to act. Superintendent Whalen obtained approval from the board to act. He also consulted with Mr. Dunbar at KDE as to the correct procedure and to secure approval from KDE to proceed. In obtaining board approval and KDE approval for the purchase, the spirit of 702 KAR 4:050 was followed.

Whether the board violated the Open Meetings Act by discussing the purchase of real property in closed session is another matter.

KRS 61.810 states:

(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:

...

(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;

Additionally, KRS 61.815(1)(c) states that "No final action may be taken at a closed session[.]"

Whether the district complied with the Open Records Act has already been considered and ruled upon by the Kentucky Office of the Attorney General, which is empowered to enforce the provisions of the Open Records statutes. The Attorney General issued Open Meeting Decision 18-OMD-181 regarding this matter on September 21, 2018.

That decision stated,

We find that the Board's authorization to the District Superintendent of a maximum amount to bid on property constituted "final action" and that the Board thus violated KRS 61.815(1)(c).

This is consistent with the Supreme Court of Kentucky's interpretation of the Open Records Act in *Board of Commissioners of the City of Danville v. Advocate Communications, Inc.*, 527 S.W.3d 803 (Ky. 2017). The Court held that a municipal board of commissioners violated the law when it entered into a closed session to authorize a maximum bid on property and to discuss the use of a bidding agent on the board's behalf. The Court stated,

The city's interest in bidding on the property could have been discussed in open session, giving all citizens an opportunity to discuss the idea without affecting the value of the property, to the City's detriment. The closed portion of the meeting, we believe, could have been used to discuss bidding strategy and the maximum price the mayor, or any other bidding agent, would have been authorized to bid. In that way, the exception for avoiding publicity likely to affect the value of the property would have been strictly complied with....We are not unmindful of the quandary that the Board faced. Public knowledge of the maximum bid approved in the closed session could easily affect both the bidding process and the purchase price of the property. However, the vote in open meeting for the City to bid on and potentially purchase the property would not require disclosure of the maximum authorized bid.

OEA has been advised that the acquisition of the property was completed. The district has obviously been instructed about and understands the requirements of the Open Meetings Act regarding closed sessions for the purpose of acquiring property.

ALLEGATION #2: Superintendent Leonard Whalen purchased a car without board approval and uses it for personal driving.

FINDINGS

Superintendent Leonard Whalen and Dawson Springs Independent Board of Education Chairperson Vickie Allen stated that the district has four cars, mostly used for transporting small groups of students to extra-curricular activities (such as golf, academic team, and other small group activities.) Mr. Whalen stated that he drives a district-owned 2004 Crown Victoria car around the district to school functions or to out-of-district meetings. District cars are available to any district employee on an as-needed basis, and they are signed in and out by whoever uses them.

The board approved the purchase of all the cars, including the 2004 Crown Victoria.

Financial records regarding gasoline expenses, mileage and use of the cars corroborate the information from interviewees related to all the cars owned by the district.

Multiple central office/district staff informed OEA that they were unaware of any financial improprieties concerning the use of district vehicles.

CONCLUSIONS

Dawson Springs Independent policy number 03.1321 states, in part:

All personnel shall be responsible for the school equipment, supplies, books, furniture, and apparatus under their care and use. Any damaged, lost, stolen, or vandalized property shall be reported to the employee's immediate supervisor, who shall then report it to the Superintendent/designee once it is confirmed that the item cannot be recovered.

In addition, employees shall not perform personal services for themselves or for others for pay or profit during work time and/or using District property or facilities. District property being used for unauthorized

purposes shall be reported to that employee's immediate supervisor.

OUTSIDE WORK

An employee shall not use any District facility, vehicle, electronic communication system, equipment or materials in performing outside work. These items (including security codes and electronic records, such as E mail) are property of the District and shall be used solely for job related purposes.

According to OEA inquiry, there is no indication that Mr. Whalen purchased a car without board approval, or that he uses any district vehicle for personal driving. Furthermore, there is no indication that any statute, regulation, or policy is being violated as it relates to vehicles owned by the district.

RESOLUTIONS

Allegation #1: No resolution is necessary, as OEA found no violation of law or policy as it relates to the procedure of the actual purchase of the property. No resolution is necessary as it relates to the violation of the Open Meetings Act, as that has already been addressed by the Office of the Attorney General.

Allegation #2: No resolution is necessary, as OEA found no violation of law or policy.