

UNIVERSITY OF
LOUISVILLE

Office of University Counsel
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March 8, 2016

(via Facsimile (502) 564-6801)
Amye Bensenhaver
Office of the Attorney General
Commonwealth of Kentucky
700 Capital Avenue
Frankfort, Kentucky 40601

Re: **Open Records Appeal filed by P. Hasselbacher**
Log Number: 201600105

Dear Ms. Bensenhaver:

Dr. Peter Hasselbacher has submitted an appeal of the University of Louisville's response to his request for records, which he submitted to the University on February 10, 2016. Specifically, Dr. Hasselbacher requested the following:

"all the documents, reports, and other information [P]resident Ramsey had in hand to cause him to take this action on behalf of the university....[and/or] all records used by such a representative to endorse or support the final action by [P]resident Ramsey."

The University through Sherri Pawson as official records custodian responded on February 15, 2016 that *"[t]he university has no records responsive to your request."*

Dr. Hasselbacher responded that the University leadership "must have had some information available to support its definitive action." However, the absence of records does not necessarily equate to an absence of information.

Subsequently, on February 27, 2016, Dr. Hasselbacher filed his appeal with the Office of the Attorney General's office. From the eight paragraphs, Dr. Hasselbacher outlines his grievances with the actions which were taken by the University in regards to the men's basketball team's suspension of post-season play.

First, in addressing what may be a vague Open Meetings appeal, it is important to note that the Open Meetings Act applies only to "public agencies."¹ KRS 61.805(2) sets forth the bodies that constitute "public agencies" under the OMA. With regard to universities, a "public agency" includes "the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order,

¹ See KRS 61.810(1).

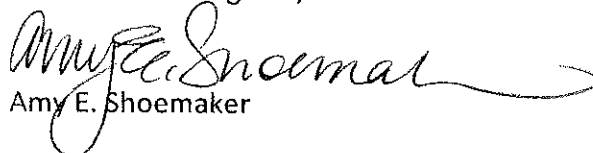
ordinance, resolution, or other legislative act.”² A “public agency” also includes a “board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency . . . established, created, and controlled by a ‘public agency’”³ and “any entity when the majority of its governing body is appointed by a ‘public agency,’ a member or employee of a ‘public agency,’ a state or local officer or any combination thereof.”⁴ The Investigative Committee does not fall within any of the definitions of “public agency” set forth in the statute; therefore, the Attorney General may correctly conclude that it is not subject to the OMA.

Secondly, the Investigative Committee has no policy-making role. Rather, according to both ACC guidance and the NCAA Constitution, “an institution’s president is responsible for the administration of all aspects of the athletics program.” (Article 2.1.1 of the NCAA Constitution, attached hereto as Exhibit 1; See also, ACC Governing Certificate, attached as Exhibit 2.) The meeting of the Investigative Committee was not subject to KRS 61.805 and did not violate the Open Meetings Act. Dr. Hasselbacher’s appeal is based entirely upon his own presumptions of how he would expect a decision to be made. However, Dr. Hasselbacher’s presumptions are incorrect.

Finally, Dr. Hasselbacher incorrectly presumes that there are records which President Ramsey had “in hand” which caused him to take action vis-a-vis post-season play. As the University stated in its initial response, there are no records responsive to Dr. Hasselbacher’s request. The University does not deny that President Ramsey had information; but there are no records. For the above reasons, the University submits that Dr. Hasselbacher’s Appeal should be denied.

Please do not hesitate to contact me if you have any questions. Thank you for your attention to this matter.

With warmest regards,


Amy E. Shoemaker

Attachments

Cc: Peter Hasselbacher, M.D. (via U.S. Mail)

² KRS 61.805(2)(d).

³ KRS 61.805(2)(g)

⁴ KRS 61.805(2)(f). See also, 13-OMD-187.

EXHIBIT 1

CONSTITUTION, ARTICLE 2

Principles for Conduct of Intercollegiate Athletics

2.01 General Principle. [*]

Legislation enacted by the Association governing the conduct of intercollegiate athletics shall be designed to advance one or more basic principles, including the following, to which the members are committed. In some instances, a delicate balance of these principles is necessary to help achieve the objectives of the Association.

2.1 The Principle of Institutional Control and Responsibility. [*]

2.1.1 Responsibility for Control. [*] It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures. *(Revised: 3/8/06)*

2.1.2 Scope of Responsibility. [*] The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution.

2.2 The Principle of Student-Athlete Well-Being. [*]

Intercollegiate athletics programs shall be conducted in a manner designed to protect and enhance the physical and educational well-being of student-athletes. *(Revised: 11/21/05)*

2.2.1 Overall Educational Experience. [*] It is the responsibility of each member institution to establish and maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's educational experience. *(Adopted: 1/10/95)*

2.2.2 Cultural Diversity and Gender Equity. [*] It is the responsibility of each member institution to establish and maintain an environment that values cultural diversity and gender equity among its student-athletes and intercollegiate athletics department staff. *(Adopted: 1/10/95)*

2.2.3 Health and Safety. [*] It is the responsibility of each member institution to protect the health of, and provide a safe environment for, each of its participating student-athletes. *(Adopted: 1/10/95)*

2.2.4 Student-Athlete/Coach Relationship. [*] It is the responsibility of each member institution to establish and maintain an environment that fosters a positive relationship between the student-athlete and coach. *(Adopted: 1/10/95)*

2.2.5 Fairness, Openness and Honesty. [*] It is the responsibility of each member institution to ensure that coaches and administrators exhibit fairness, openness and honesty in their relationships with student-athletes. *(Adopted: 1/10/95)*

2.2.6 Student-Athlete Involvement. [*] It is the responsibility of each member institution to involve student-athletes in matters that affect their lives. *(Adopted: 1/10/95)*

2.3 The Principle of Gender Equity. [*]

2.3.1 Compliance With Federal and State Legislation. [*] It is the responsibility of each member institution to comply with federal and state laws regarding gender equity. *(Adopted: 1/11/94)*

2.3.2 NCAA Legislation. [*] The Association should not adopt legislation that would prevent member institutions from complying with applicable gender-equity laws, and should adopt legislation to enhance member institutions' compliance with applicable gender-equity laws. *(Adopted: 1/11/94)*

2.3.3 Gender Bias. [*] The activities of the Association should be conducted in a manner free of gender bias. *(Adopted: 1/11/94)*

2.4 The Principle of Sportsmanship and Ethical Conduct. [*]

For intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society, student-athletes, coaches, and all others associated with these athletics programs and events should adhere to such fundamental values as respect, fairness, civility, honesty and responsibility. These values should be manifest not only in athletics participation, but also in the broad spectrum of activities affecting the athletics program. It is the responsibility of each institution to: *(Adopted: 1/9/96)*

EXHIBIT 2




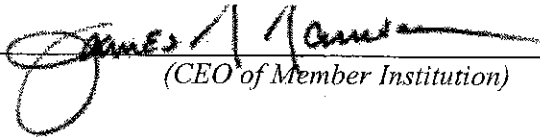
Governing Board Certification Form
Academic Year 2015-16

As Chairman of the Governing Board at University of Louisville, I attest that:

- 1) Responsibility for the administration of the athletics program has been delegated to the Chief Executive Officer of the Institution.
- 2) The Chief Executive Officer has the mandate and support of the board to operate a program of integrity in full compliance with NCAA, ACC and all other relevant rules and regulations.
- 3) The Chief Executive Officer, in consultation with the Faculty Athletics Representative and the Athletics Director, determines how the institutional vote shall be cast on issues of athletics policy presented to the NCAA and the ACC.

Date Presented to the Governing Board: 9/3/2015

Signed: 
(Chairman of the Governing Board)

Signed: 
(CEO of Member Institution)

Please return completed form before **October 16, 2015** to:

Commissioner John D. Swofford
Atlantic Coast Conference
4512 Weybridge Lane
Greensboro, NC 27407