Kentucky Board of Ed illegally closed meeting to oust Pruitt. That reveals a lot.

BY HERALD-LEADER EDITORIAL BOARD

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Gov. Matt Bevin's newly reconfigured Kentucky Board of Education got off to an ill start when its first significant action violated the state's Open Meetings Act.

Kentuckians who value open — or, for that matter, competent — government have cause for concern.

So do Bevin and the state board, since a successful challenge could conceivably invalidate Wayne Lewis' appointment as interim commissioner.

Open government laws are not picky technicalities. The difference between democracy and dictatorship is respect for open government. Without transparency, there can be no accountability.

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The 11-member state board fell far short of setting a good example the day after Bevin appointed seven new members.

The upshot of the four-hour closed session was the "resignation" (note [quotation marks denoting skepticism](https://en.wikipedia.org/wiki/Scare_quotes)) of Education Commissioner Stephen Pruitt and the naming of Lewis, a Bevin administration insider and prominent charter school advocate, as interim commissioner.

The newly elected board chairman, Milton Seymore, [said Pruitt "was not pushed out"](http://http/www.kentucky.com/news/local/education/article209169014.html) and explained that the [board "wanted to go in a different direction"](https://www.courier-journal.com/story/news/2018/04/18/kentucky-education-board-stephen-pruitt-ouster-explained-matt-bevin/528536002/) to more quickly move students "to another level."

Kentucky law, reasonably enough, requires that public boards discuss and debate changes in public policy and direction in, you guessed it, public.

Also, a resignation is not one of the three personnel topics that may be discussed in a closed or executive session.

[Amye Bensenhaver](http://www.bipps.org/center-for-open-government/), a former assistant attorney general specializing in open government laws and director of the Bluegrass Institute's Center for Open Government, [detailed the "serious open meetings questions"](http://http/www.bipps.org/kentucky-board-of-education-must-conduct-the-public-business-in-the-sunlight-even-as-it-pursue-a-different-direction/) raised by the April 17 special meeting.

The open-meetings exemption for personnel is narrow: "for discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member or student." There's no open-meetings exemption for resignations or general personnel matters, as the [Supreme Court made clear in 2012.](https://scholar.google.com/scholar_case?case=5875616568711527786&hl=en&as_sdt=6&as_vis=1&oi=scholarr)

The wording of the motion to go into executive session was deficient because it did not, as the law requires, describe the reason and general nature of what was to be discussed. Then board chairman Seymore was so nervous, unprepared or poorly advised that he neglected to put the motion to a vote. Authorizing an executive session requires an OK from a majority of the board.

As Bensenhaver said, only the board members know what went on behind closed doors. The board did publicly acknowledge that Pruitt's job performance was not at issue and he was not being fired for cause. Conveniently (actually, too conveniently), an "employment contract amendment" and interim commissioner were on hand as soon as the board returned to public view.

All this, says Bensenhaver, "suggests that the discussion exceeded the permissible scope" of the law's exemptions. Also, "to be clear, a discussion of a 'different direction,' for the KBE or for education in Kentucky, is not an appropriate subject for a closed session, and any part of the discussion touching on this general topic was almost certainly improper."

State law mandates that officials in local government, schools and higher education receive information about open government laws within 60 days of taking office. Curiously, no such mandate applies to state-level officials. Chairman Seymore and the state board members should, nonetheless, brush up on transparency laws.

Pruitt's ousting and Lewis' rise were obviously orchestrated, though ineptly executed in contempt of Kentucky's Open Meetings Act, which, when you think about it, was rather revealing after all.