

## SUPREME COURT OF KENTUCKY

# Department of Revenue, Finance & Administration Cabinet v. Wyrick

323 S.W.3d 710 (Ky. 2010) · No. Nos. 2008-SC-000468-DG, 2009-SC-000543-DG · Decided October 21, 2010

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### SUMMARY

The Supreme Court of Kentucky interpreted the civil litigation limitation in Kentucky's Open Records Law, KRS 61.878(1). The court held that an open-records request must be evaluated independently of whether the requester is a party or potential party to litigation, and that the limitation does not bar disclosure of records not otherwise exempt under the statute. The court affirmed the Court of Appeals and remanded for further proceedings, including consideration of the statutory exemptions.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Kentucky                                                                                                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Justice Schroder                                                                                                                                                                                                                                                                                                                |
| JURISDICTION          | Kentucky                                                                                                                                                                                                                                                                                                                        |
| DECIDED               | October 21, 2010                                                                                                                                                                                                                                                                                                                |
| DOCKET                | Nos. 2008-SC-000468-DG, 2009-SC-000543-DG                                                                                                                                                                                                                                                                                       |
| DISPOSITION           | remanded                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | The Department of Revenue appealed the Attorney General's determination under the Kentucky Open Records Law that specified records were subject to disclosure. The Franklin Circuit Court ruled for the Department, and the Court of Appeals reversed and remanded. The Supreme Court of Kentucky granted discretionary review. |
| STANDARD OF REVIEW    | De novo review of the interpretation of the Kentucky Open Records Law and the statutory civil-litigation limitation.                                                                                                                                                                                                            |
| PRECEDENTIAL VALUE    | Published Kentucky Supreme Court opinion; precedential                                                                                                                                                                                                                                                                          |
| PARTIES               | Department of Revenue, Finance and Administration Cabinet, Commonwealth of Kentucky, et al. v. Mitzi D. Wyrick                                                                                                                                                                                                                  |

### TOPICS

administrative law

judicial review of agency action

statutory interpretation

plain meaning rule

appellate procedure

## PRACTICE AREAS

administrative law

Kentucky Open Records Law

statutory interpretation

tax-related administrative proceedings

## QUESTIONS PRESENTED

1. Whether Wyrick's request for Attorney General review of the Department's open-records denial was timely when the Open Records Law does not specify a deadline for requesting that review.
2. Whether the civil-litigation limitation in KRS 61.878(1) independently bars a litigant or potential litigant from obtaining public records through an open-records request when the records are not otherwise within one of the statutory exemptions.
3. Whether the circuit court properly resolved the records requests by applying the civil-litigation limitation before determining whether the records fell within one of the specific exemptions in KRS 61.878(1)(a)-(n).

## HOLDINGS

1. Because the Kentucky Open Records Law does not prescribe a deadline for requesting Attorney General review of an agency's denial, Wyrick's request filed approximately one month after the Department's response was timely.
2. The civil-litigation limitation does not independently bar a person involved in litigation with a public agency from using the Open Records Law to obtain records that are not otherwise exempt from disclosure. The agency must first determine whether the requested materials fall within a statutory or other applicable exclusion; only if an exclusion applies does the limitation restrict a court's authority to order disclosure of litigation-related materials beyond the scope of pretrial discovery.

## KEY QUOTATIONS

*“We hold that a request for open records should be evaluated independently of whether the requester is a party or potential party to litigation.” (at 711)*

*“The civil litigation limitation is an explanation of a court's authority to order inspection of documents otherwise exempted from disclosure under KRS 61.878(1)(a)-(n). It is not an exception to an agency's duty to disclose nonexempted records.” (at 714)*

## FACTUAL BACKGROUND

Mitzi Wyrick, representing Gannett Satellite Information Network, Inc. in a tax-refund claim before the Kentucky Board of Tax Appeals, first sought documents from the Department of Revenue through discovery. After the Board sustained the Department's objections, Wyrick requested nine categories of substantially similar documents under the Kentucky Open Records Law and later requested documents produced in related litigation.

The Department denied most of the first request, relying on KRS 61.878(1)'s civil-litigation limitation, and the Attorney General determined that some requested documents were subject to disclosure.

## PROCEDURAL HISTORY

Wyrick, an attorney representing Gannett Satellite Information Network, Inc. in a tax-refund proceeding before the Kentucky Board of Tax Appeals, requested documents from the Department through discovery and later through the Kentucky Open Records Law. The Department denied most requests, invoking the civil-litigation limitation in KRS 61.878(1). The Attorney General ordered disclosure of some records; the Franklin Circuit Court ruled for the Department, but the Court of Appeals reversed and remanded. The Supreme Court affirmed the Court of Appeals and remanded the matter to the Franklin Circuit Court.

## DISPOSITION

remanded

## REMAND INSTRUCTIONS

The judgment of the Court of Appeals was affirmed, and the case was remanded to the Franklin Circuit Court for further proceedings consistent with the opinion. The circuit court must first determine whether the requested records fall within one of the statutory or other applicable exclusions, and then apply the civil-litigation limitation only as a restriction on any court-ordered disclosure of excluded litigation-related materials.

## CASES CITED

- Gannett Satellite Information Network, Inc. v. Department of Revenue, KBTA No. K-04-R-03
- Johnson Controls v. Commonwealth of Kentucky, Revenue Cabinet, Franklin Circuit Court Civil Action No. 00-CI-00661, 2004 WL 5471176
- Kentucky Lottery Corp. v. Stewart, 41 S.W.3d 860, 863 (Ky. App. 2001)
- Medley v. Board of Education of Shelby County, 168 S.W.3d 398, 402 (Ky. App. 2004)
- Hoy v. Kentucky Industrial Revitalization Authority, 907 S.W.2d 766, 768 (Ky. 1995)
- Layne v. Newberg, 841 S.W.2d 181, 183 (Ky. 1992)
- Beckham v. Board of Education of Jefferson County, 873 S.W.2d 575, 577 (Ky. 1994)
- Gateway Construction Co. v. Wallbaum, 356 S.W.2d 247 (Ky. 1962)