

SUPREME COURT OF KENTUCKY

Strong v. Chandler

70 S.W.3d 405 (Ky. 2002) · Decided March 21, 2002

SUMMARY

The Kentucky Supreme Court held that the Attorney General may inspect confidential and proprietary records held by the Cabinet for Economic Development when investigating whether an economic incentive contract resulted in an improper payment or credit from the state treasury. The court concluded that this inspection authority arises independently under KRS 15.060(2) and is not barred by the Open Records Act. It affirmed an order requiring the Attorney General to conduct the inspection in camera under the circuit court’s supervision.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Wintersheimer, Justice
JURISDICTION	Kentucky
DECIDED	March 21, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Kentucky Supreme Court granted discretionary review of a Court of Appeals decision that vacated the Franklin Circuit Court's summary judgment for the Cabinet and remanded for an in camera inspection of the requested records.
STANDARD OF REVIEW	De novo review of statutory interpretation and summary judgment.
PRECEDENTIAL VALUE	precedential
PARTIES	Strong v. Chandler

TOPICS

- statutory interpretation
- administrative law
- government contracts
- judicial review of agency action

PRACTICE AREAS

- administrative law
- statutory interpretation
- government contracts
- public records

QUESTIONS PRESENTED

1. Whether KRS 15.020 and KRS 15.060 authorize the Attorney General to inspect Cabinet records relevant to determining whether economic-incentive funds were improperly paid or must be recovered.
2. Whether the Open Records Act, including KRS 61.878(1)(c)(2)(b), prohibits or limits the Attorney General's inspection of confidential and proprietary incentive-contract records.
3. Whether the Attorney General's inspection authority under KRS 15.060(2) arises before the filing of a recovery action.

HOLDINGS

1. KRS 15.060(2) empowers the Attorney General to compel production and inspect records in the possession of Commonwealth officers when the records are relevant to determining whether money was improperly paid from, or must be recovered for, the state treasury.
2. The Open Records Act does not prohibit or limit the Attorney General's inspection of the records because KRS 61.878(5) permits information sharing between public agencies for a legitimate governmental need or function, and KRS 61.878(1)(c)(3) excludes records whose disclosure is directed by another statute.
3. The Attorney General may inspect relevant records before instituting a recovery action; KRS 15.060(2) does not require a lawsuit to be pending before the inspection authority arises.

KEY QUOTATIONS

“The power to institute actions must include the ability to inspect and review documents and information relative to a determination of whether a good faith belief exists in order to bring legal action.” (at 410)

“The authority to require compliance pursuant to KRS 15.060(2) is independent of the Open Records Act.” (at 411)

FACTUAL BACKGROUND

Alliance Research, Inc. received economic incentives from the Kentucky Cabinet for Economic Development in connection with operating a Kentucky facility. After Alliance announced that it would close its Radcliff plant and move the operation to West Virginia, the Attorney General sought access to Cabinet records to determine whether Alliance had breached its incentive contract and whether funds were owed to the Commonwealth. The Cabinet denied access, asserting that the records were confidential and proprietary under the Open Records Act.

PROCEDURAL HISTORY

The Franklin Circuit Court granted summary judgment to the Cabinet, holding that the Open Records Act controlled and protected the confidential records. The Court of Appeals vacated and remanded for an in camera inspection, concluding that the Attorney General could inspect the records under KRS 15.060(2). The Kentucky Supreme Court accepted discretionary review and affirmed the Court of Appeals.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Attorney General's inspection must be conducted in camera under the supervision of the Franklin Circuit Court.

CASES CITED

- Hoy v. Kentucky Industrial Revitalization Authority, 907 S.W.2d 766 (Ky. 1995)
- Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism, 906 S.W.2d 318 (Ky. 1995)
- Southeastern United Medigroup, Inc. v. Hughes, 952 S.W.2d 195 (Ky. 1997)
- Folks v. Barren County, 313 Ky. 515, 232 S.W.2d 1010 (1950)
- Long v. Mayo, 271 Ky. 192, 111 S.W.2d 633 (1937)
- Bradley v. Austin, 841 F.2d 1288 (6th Cir. 1988)
- Naegle Outdoor Advertising Co. v. Moulton, 773 F.2d 692 (6th Cir. 1985)
- Democratic Party of Kentucky v. Graham, 976 S.W.2d 423 (Ky. 1998)
- Davis v. Commonwealth Life Insurance Co., 284 S.W.2d 809 (Ky. 1955)
- Commonwealth ex rel. Breckinridge v. Nunn, 452 S.W.2d 381 (Ky. 1970)

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