

ALASKA STATE PERSONNEL BOARD MEETING

September 9, 2009

12:00 P.M.

Frontier Building

3601 C Street, Suite 880

Anchorage, Alaska

In person:

Debra English, Chairperson

Alfred Tamagni, Board Member

Nicki Neal, Secretary to the Personnel Board

Judy Bockmon, Assistant Attorney General, Department of Law

Tom Daniel, Esq.

Danielle Ryman, Esq.

Jerry Burnett, Department of Revenue

John Mallonee, Department of Revenue

Linda Kellen Biegel, Public

Andree McLeod, Public

Valerie Henning, Public

Sean Cockerham, Anchorage Daily News

Present by teleconference:

Laura Plenert, Board Member

Bill Milks, Assistant Attorney General, Department of Law

Dr. Don McLean, Public Member, Board of Governors, Alaska Bar Association

Emy Abad, Division of Personnel & Labor Relations

Rick Morrison, Division of Personnel & Labor Relations

Julie Wilson, Division of Personnel & Relations

NOTE: This document is only a summary of the above referenced meeting. A complete transcript of this meeting is available at: <http://dop.state.ak.us/personnelboard/minutes>

1. CALL TO ORDER

Chairperson English called the meeting to order at 12:05 p.m. and confirmed that board members Plenert and Tamagni were present.

2. APPROVAL OF AGENDA

The agenda was moved and approved.

3. APPROVAL OF MINUTES

The minutes for the meeting held on May 27, 2009 were moved and approved.

4. REVIEW OF QUARTERLY ETHICS REPORTS

Board Member Tamagni asked about the boards and commissions that did not submit quarterly ethics reports. AAG Bockmon indicated that some boards and

commissions meet annually therefore submit reports on an annual basis. She will confirm which boards and commissions meet quarterly and which meet annually to avoid the appearance that some are out of compliance.

5. REVIEW OF ETHICS CASE LOG

Board Member Tamagni stated that he will hold his question for executive session due to the confidential nature of the matter. There were no other comments or questions.

6. ETHICS DISCLOSURE

Board Member Tamagni disclosed that he administers Dr. McLean's profit sharing program and trust. Board members had no other disclosures.

7. EXPANSION OF THE PARTIALLY EXEMPT SERVICE

The board was asked to consider expanding the partially exempt service to include PCN 04-7103, Deputy Director, Child Support Services Division. Deputy Commissioner Jerry Burnett explained that this position serves as a colleague to the director with responsibility for one-half of the division which includes the investigation, outreach, welfare to work, and data processing sections in addition to public support and client services. The position is fully responsible for carrying out policies within these areas. Board Member Plenert asked if movement to the partially exempt service would in any way impact recruitment. Ms. Neal explained that partially exempt positions are not subject to the merit principle as it relates to recruitment. Chairperson English asked how long the position has been vacant. Deputy Commissioner Burnett stated that it has been vacant since 2003. Chairperson English also asked about the minimum qualifications for the position. It was explained that typically positions in the partially exempt service do not have minimum qualifications unless they are provided for in statute. Ms. Neal confirmed that the position is currently in the supervisory bargaining unit and that the Alaska Public Employees Association was notified of this request. Expansion of the partially exempt service to include PCN 04-7103 was moved and approved.

8. PUBLIC COMMENT

Dr. Don McLean expressed concern over how information leaked to the media regarding Tom Daniel's independent investigation on behalf of the Personnel Board. He suggested that specific regulations be written to provide guidelines to future investigators and the Attorney General. Dr. McLean questioned the current interpretation of the law regarding the release of independent counsel's report to the complainant. It is his belief that the report is confidential and only the recommended actions should have been released to the complainant. Of specific concern to Dr. McLean is that the report contained statements that implied Kristan Cole violated the ethics law. Dr. McLean questioned Mr. Daniel's motives in releasing the report and if his actions might constitute an ethics violation. AAG Bockmon assured Dr. McLean that the confidentiality provision is taken very seriously and that the Department of Law is looking at what they can do within the bounds of what is set out in the statute. Chairperson English stated that Mr.

Daniel released the report in accordance with advice from the Department of Law. Mr. Daniel responded to Dr. McLean by stating neither he nor anyone in his office would leak a report to the public. Mr. Daniel acknowledged providing a copy of the report to the complainant as it was his understanding, from the Attorney General's office, that that had been the practice in the past. Mr. Daniel admitted that the statute is not clear. However, he stated that he took his confidentiality obligation seriously and does not believe that he violated the confidentiality requirement.

Andree McLeod expressed interest in addressing the board and was informed that she has only one ethics complaint before the board that is to be discussed in public session. Ms. McLeod admonished the board for not introducing themselves. She stated that the board cannot control the public or Mike Nizich, Chief of Staff. Ms. McLeod asserted that Independent Counsel, Tom Daniel and a complainant are taking the heat for releasing a report when Chief of Staff Nizich also receives reports. She accused the board of allowing the Governor's Office to use resources to malign and vilify complainants. Ms. McLeod also stated that the board has not served the public. Board Member Tamagni responded as did Chairperson English.

Valerie Henning expressed her opinion regarding the meeting and explained she was present due to her concern about what's happening in state government.

Linda Kellen Biegel asked for clarification on whether or not Mr. Nizich received a copy of the Alaska Fund Trust summary report in addition to the complainant and former Governor Sarah Palin. Chairperson English responded that to the best of her knowledge, Mr. Nizich did not receive this report. However Chairperson English clarified that Mr. Nizich did receive one report in error. Ms. Kellen Biegel encouraged the board to treat the confidentiality leak regarding the Alaska Fund Trust Report as a separate issue and to proceed with issuing a formal accusation. Discussion occurred regarding hearings and settlements. AAG Bockmon stated it is the Department of Law's policy, that when there are settlements, the document is public. Ms. Kellen Biegel took issue with Board Member Tamagni's statement that some of the ethics complaints submitted were frivolous, and with some of the language used in the exchange between Board Member Tamagni and Ms. McLeod.

9. ETHICS COMPLAINTS

Written comments submitted in accordance with AS 39.52.335(e) in response to the dismissal of two ethics complaints were before the board. Confidentiality was waived by the individual named in each of the complaints.

Complainant: Linda Kellen Biegel

Date of Complaint: March 24, 2009

Nature of Complaint: Governor Sarah Palin violated the Ethics Act when she acted as the official starter of the Iron Dog snow machine race while wearing a

jacket emblazoned with the name "Team Arctic," a logo of the Arctic Cat Company.

Mr. Daniel, as Independent Counsel assigned to this complaint explained that even though the Governor's husband received a discount on Arctic Cat equipment and had for several years, there was no benefit the Governor was receiving for wearing the Arctic Cat jacket and pants. Ms. Kellen Biegel was given an opportunity to speak in support of her appeal and board members sought clarification from both Ms. Kellen Biegel and Mr. Daniel. A discussion ensued about actual compensation and potential compensation. The board declined to ask Mr. Daniel to re-evaluate his decision and the board did not issue a report on this disposition of the complaint in accordance with AS 39.52.335(f).

Complainant: Andree McLeod

Date of Complaint: July 14, 2009

Nature of Complaint: Governor Sarah Palin violated the Ethics Act by continuing to receive her \$125,000 annual state salary while she was "off duty" in the fall of 2008, traveling around the United States as the Republican vice presidential candidate.

In support of his determination that this complaint does not constitute a violation of the Ethics Act, Mr. Daniel, as Independent Counsel, explained that the governor is paid for holding the office of governor and is not paid based on hours or days worked. Ms. McLeod was provided an opportunity to speak in support of her appeal and the board members sought clarification from both Ms. McLeod and Mr. Daniel. A discussion regarding "improper motivation" ensued. The board declined to ask Mr. Daniel to re-evaluate his decision and the board did not issue a report on this disposition of the complaint in accordance with AS 39.52.335(f).

10. EXECUTIVE SESSION

The board moved to executive session at 1:59 p.m. Executive session concluded at 2:35 p.m.

11. UPDATE FROM THE DIRECTOR OF PERSONNEL AND LABOR RELATIONS

Held until the next meeting due to time constraints.

12. OTHER MATTERS BEFORE THE BOARD

Chairperson English signed the Order Changing Regulations for the leave regulation amendments approved at the May 27, 2009 meeting.

Board Member Tamagni asked if there are ethics regulations. AAG Bockmon confirmed there are and committed to provide board members with a copy. AAG Bockmon explained that the regulations have been in place since 1994. Proposed

amendments are awaiting review by the Attorney General. AAG Bockmon will notify the board members when the proposed amendments are released. AAG Bill Milks explained that board members can comment on the regulations as individuals or collectively as a board.

The next meeting will be scheduled for mid-October. Agenda items will include review of the proposed amendments to the ethics regulations and the Attorney General Opinion dated August 5, 2009 on ethics issues.

13. ADJOURNMENT

The board adjourned at 2:45 p.m.