

ALASKA STATE PERSONNEL BOARD MEETING

November 12, 2020

10:30 A.M.

Atwood Building

550 W 7th Avenue, Suite 106

Anchorage, Alaska

In person:

Al Tamagni, Chair

Craig Johnson, Board Member

Dr. Keith Hamilton, Board Member

Kate Sheehan, Director, Division of Personnel & Labor Relations

Present by teleconference:

Maria Bahr, Attorney IV, Department of Law

Siobhan McIntyre, Attorney IV, Department of Law

Jennifer Williams, Paralegal I, Department of Law

Jeff Hahnen, Human Resource Consultant I, Division of Personnel & Labor Relations

Frank Hurt, Human Resource Consultant II, Division of Personnel & Labor Relations

1. CALL TO ORDER

Chairman Tamagni called the meeting to order at 10:30 a.m.

2. APPROVAL OF AGENDA

Chairman Tamagni added the Election of Officers to the agenda without objection. The agenda was moved and approved.

3. APPROVAL OF MINUTES

The minutes of the September 29, 2020, meeting was moved and approved.

4. ETHICS DISCLOSURE – PERSONNEL BOARD MEMBERS

The board members had no disclosures or conflicts of interest that they were aware of.

5. ETHICS ISSUES AND QUESTIONS

Siobhan McIntyre, the Personnel Boards attorney, provided a high-level overview of the open meetings act requires, and what constitutes a meeting, when a meeting needs to be held, and what happens if a meeting is not convened as is required by the act. The opens meeting act places a high value on transparency, and the term *meeting* is considered very broad under the act. The definition of meeting includes any gathering between either more than three members or the majority of members of the board. For the Personnel Board this would mean as little as two members get together to discuss or consider anything that they are empowered to act on. Under case law, the discuss can be as broad as zone board site visits. This is where board members when to a site to review information and to discuss the

site but did not see that as a traditional meeting. The Alaska Supreme Court determined that it was a meeting because the definition under the open meetings act is so broad. The key point is that whenever the board meets regarding any matter that it is empowered to act upon, or to discuss something that is a key step in the deliberating process, that it is considered a meeting. Because this board only has three members this would mean that email communications between two board members could be considered a meeting. If an action is taken without convening a formal open meeting, then the actions taken are voidable and the board would need to redeliberate under an open meeting to confirm the action.

Board Member Johnson proposed a scenario where a board member hears something and wants to call the Chair and ask what the standing is on a particular matter. Does that conversation constitute a meeting based on the open meeting act definition? Siobhan McIntyre explained that the key component to consider is there a discussion on the matter on which the board is empowered to act. Is the communication that you are having with the other board member include the deliberative decision-making process? If so, it should be part of a formal open meeting. Chairman Tamagni asked about a situation where he forwarded information to the other board members and to Director Kate Sheehan regarding an ethics matter, and if this constituted a meeting. Siobhan McIntyre stated that each situation would need to be evaluated individually, and that gathering information could be part of the deliberation process. Maria Bahr added that exchanging information via email is probably okay with regards to the open meeting act but having some sort of discussion that leads to an action would require an open meeting. Any actions taken in violation of the open meetings act are void or voidable, but the board can remedy that in many situations by taking that action up at a publicly noted meeting.

Kate Sheehan answered some questions that the board previously asked. What can the board delegate to the chair, or do they have to make all their decisions in open meetings? Administrative duties can be delegated to the chair, but any decision making must be a quorum. For the Personnel Board, a quorum is two members. Can the board file ethics complaints? Any board member as an individual can file an ethics complaint, but the board itself cannot file an ethics complaint without a statutory change. Board Member Hamilton asked if the individual that submitted the ethics complaint would need to recuse themselves from the deliberation process? Maria Bahr responded that the individual that brought forward the complaint would need to recuse themselves.

Board member Johnson asked how it was that the Alaska Public Officers Commission (APOC) could file a complaint without it having to be an outside citizen that files it, but the Personnel Board could not? Maria Bahr stated that the statutes are very different for both and there is nothing in the executive branch ethics act that allows the Personnel Board to file a complaint. Most of the complaints that come into APOC are a result of concerns raised by a member of the public, and she is not aware of a situation where APOC filed a complaint

directly. APOC is very different from the Personnel Board and from the ethics act.

The board had previously requested that any complaints against the governor, lieutenant governor, and the attorney general be brought to the boards attention prior to sending it to outside council. Director Sheehan stated that she would commit to doing that going forward. Under statute, there is not any leeway about if a complaint is forwarded to outside council, so the Director will still need to fulfill that requirement, but she will send it to the Personnel Board first. Any updates received from outside council will also be forwarded to the Personnel Board for review.

Alaska statute 39.52.310.(c) states “If a complaint alleges a violation of AS 39.52.110, 39.52.190 by the governor, lieutenant governor, or the attorney general, the matter shall be referred to the personnel board. The personnel board shall return a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office as provided in (j) of this section if the complaint is initiated during a campaign period.” Maria Bahr explained that there is a provision in the statute that if there is a campaign going on and an ethics act complaint comes in, the board is to return the complaint and not deal with it because the ethics act cannot be used as a strategy to try and undermine a candidate’s campaign. The statute goes on to state “The personnel board shall retain independent counsel who shall act in the place of the attorney general under (d) (i) of this section, AS 39.52.320, 39.52.350, and 39.52.360(c) and (d). Notwithstanding AS 36.30.015(d), the personnel board may contract for or hire independent counsel under this subsection without notifying or securing the approval of the Department of Law.” Maria Bahr explained that attaining outside counsel is done completely independent of the Department of Law. The Personnel Board is responsible for referring matters of this nature to outside counsel who basically acts in place of the attorney general. Chairperson Tamagni had concerns that the statute does not specifically state that the complaint should be sent to the Personnel Board chair and the board members. Maria Bahr disagreed and believes that is what the statute is stating and reconfirmed that the Department of Law sends all complaints to Director Sheehan for that purpose. It was advised that if the board wishes to use one outside counsel over another with regards to an ethics complaint, that deliberation and action should be done in an open meeting. Director Sheehan stated that the Personnel Board has two outside counsels’ contracts that are expiring in August 2021. In the spring, the board will need to start the RFP process and there will be someone from procurement at the next meeting to help walk the board through that process. The board would like to know who these outside counsels are and to discuss the matter further once the proposals have been generated prior to deciding whether to approval those contracts.

Director Sheehan explained the process for making regulation and statutory changes after consulting with the Department of Law. For the ethics act, any

statutory or regulation changes are under the authority of the attorney general. The Personnel Board could request that the Commissioner for the Department of Administration put forth regulation or statutory changes, or the board could make that request through the Department of Law. There would not be any authority under the Personnel Boards part to make these types of changes.

The Personnel Board discussed reviewing the statutory language for possible updates prior to their next meeting, then going over those changes as a group. Once the board has specific changes ready for a proposal, they will discuss the best way to present those changes before the legislature.

6. EXECUTIVE SESSION UNDER AS 44.62.310(c)(3)

The Personnel Board went into executive session to review the confidential ethics case logs.

7. UPDATE FROM THE DIRECTOR OF PERSONNEL & LABOR RELATIONS

The Personnel Rules need to be updated due to the State moving to biweekly payroll processing where employees are being paid every other Friday, and Director Sheehan should have those regulation changes ready for the board to review and approve with the next meeting. The State is also implementing a Learning Management system, a Performance Management system, and Online Onboarding. These changes will help as the State depends heavily on teleworking due to COVID and will reduce our current reliance on paper. Bargaining with the unions will also be starting this month.

8. ELECTION OF OFFICERS

The board unanimously voted to elect Al Tamagni as the continuing Chair of the Personnel Board.

9. OTHER MATTERS THAT MAY COME BEFORE THE BOARD

The board agreed to meet next on January 19, 2021 at 10:00 a.m.

10. ADJOURNMENT

The meeting adjourned at 11:12 a.m.