

ALASKA STATE PERSONNEL BOARD MEETING

September 29, 2020

10:30 A.M.

Atwood Building

550 W 7th Avenue, Suite 106

Anchorage, Alaska

In person:

Al Tamagni, Chair

Craig Johnson, Board Member

Kate Sheehan, Director, Division of Personnel & Labor Relations

Dr. Keith Hamilton, Board Member

Present by teleconference:

Maria Bahr, Attorney IV, Department of Law

Siobhan McIntyre, Attorney IV, Department of Law

Pam Day, Human Resource Consultant V, Division of Personnel & Labor Relations

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

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

Kelli Toth, Legislative Assistant, Office of Senator Reinbold

John Tiemessen, Attorney, Outside Counsel

Ed Martin, Member of the Public

1. CALL TO ORDER

Chairman Tamagni called the meeting to order at 10:37 a.m.

2. APPROVAL OF AGENDA

The agenda was moved and approved.

3. APPROVAL OF MINUTES

The minutes of the November 5, 2019, 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. UPDATE ON PERSONNEL ACT AND PERSONNEL RULES

Director Kate Sheehan provided a quick overview of the board's responsibilities and the Personnel Rules. The State Personnel Act is found in the Alaska Statute 39.25 and that is what the Personnel Rules are derived from. The Personnel Board's powers and duties are provided under AS 39.25.070.

(1) approve or disapprove amendments to the personnel rules in accordance with AS 39.25.140;

(2) consider and act upon recommendations for the extension of the partially exempt service and the classified service as provided in AS 39.25.130;

(3) hear and determine appeals by employees in the classified service as provided in AS 39.25.170;

Director Sheehan explained that (3) only applies to excluded employees. These are classified employees not represented by a bargaining unit, and the only employees that covers right now are the three staff of the Alaska Labor Relations agency. Employees that are considered classified are covered by a Collective Bargaining Agreement, unless the agreement is silent, in which case the Personnel Rules are the authority. Employees that are partially exempt are covered by some of the Personnel Rules, but not all of them, which is determined by looking at the partially exempt statute.

(4) establish its own rules of procedure; two members constitute a quorum for the transaction of business and two affirmative votes are required for final action on matters acted upon by the board;

The Personnel Board must provide 30 days' notice prior to updating the Personnel Rules. The board would have a hearing on those changes to allow for public testimony before voting for approval. Kate Sheehan explained that due to the implementation of a biweekly payroll schedule by the State, there would be regulation changes for the board to approve, which would be made available by the next meeting.

(5) elect a chair from its membership;

(6) have the power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to a hearing authorized by this chapter;

(7) employ staff members, who shall be in the classified service;

(8) carry out its powers and duties under AS 39.52.

6. ETHICS ISSUES AND QUESTIONS

Chair Tamagni asked if a complaint were filed against the Attorney General, how is that process handled? Maria Bahr explained that if a complaint comes in for the Attorney General, Governor, or Lieutenant Governor those go to the Personnel Board for appointment of independent counsel as outlined in AS 39.52.310.(c). The legislature has designated those three individuals as employees who must go to independent counsel for any investigations or processing of those ethics' complaints. The Department of Law is not included in those investigations, and it is the responsibility of the independent counsel to begin investigating ethics complaint allegations and determine if there is enough probable cause to find that an ethics violation exists. All recent ethics complaints against the Attorney General, Governor, and Lieutenant Governor have gone to attorney John Tiemessen as outside counsel.

Chair Tamagni asked why the ethics complaint against the Governor that was filed in July 2019 was not brought to the Personnel Board's attention in accordance with AS 39.52.310.(c)? Director Sheehan responded that she receives these types of complaints from the Department of Law and she forwards it to the independent counsel on behalf of the Personnel Board, currently John Tiemessen. The independent counsel does a conflict check, and if they accept it, it is out of the director's hands at that point. The Personnel Board requests that future ethics complaints are brought to the boards attention prior to it being submitted to independent counsel, in accordance with AS 39.52.310.(c).

Maria Bahr provided a general overview of the ethics act, which was enacted by the legislature in 1986 as a set of rules for the executive branch. The legislative branch has their own ethics act which differs significantly from the executive ethics act. New provisions have been added to the ethics act overtime as situations have come up. For example, in the early 2000's there were a number of new provisions put in place regarding the interaction of lobbyists and the introduction of electronic devices. To a certain extent, the act tries to stay up to date with the times.

A public officer is a public or State employee under the executive branch, and any member of a board or commission. The ethics act talks about the financial interest, which is the interest held by the public officer, or an immediate family member, which include involvement or ownership in a business including a professional or private relationship that is a source of income. A personal interest is one that is held by the public officer, or an immediate family member, which includes a membership in any organization whether it is a nonprofit, political or charitable origination. The act also talks about a benefit, which is defined as anything that is to the public officer's advantage or self-interest. Many of the prohibitions in the ethics act also apply to the public officer's immediate family members. The act defines immediate family members as your spouse, partner, children, stepchildren, parents, sibling, parents, grandparents, aunts and uncles, and in-laws. The act also talks about public officers taking official action, which is defined as not just voting on a matter, but also making a recommendation, assisting, or participating in a particular matter. Of great concern and focus right now is the acts prohibition of partisan political activities, which are activities intended to benefit or harm a candidate, a potential candidate, a political party, or a group.

The ethics act has a category for designated ethics supervisors, who is the person that you go to for assistance and guidance with navigating the act. Maria Bahr is the Attorney Generals delegate for designated ethics supervisor for everyone in the Department of Law, as well as the Governor and the Lieutenant Governor. Everyone else has a different designated ethics supervisor. The Personnel Board's designated ethics supervisor is the chair, and the chair's designated ethics supervisor is the Governor's Office.

The premise of the ethics act is that public officers must avoid a substantial and material conflicts of interest. A public officer, and their immediate family members, may not benefit financially or personally from their position and actions as a state officer. The act does recognize that individual pursuits should not be discouraged. There are some minor and inconsequential conflicts of interest that are considered unavoidable such as an ownership that the public officer may have in a company, or in stocks and bonds, if it is valued at less than \$5,000. There is also an exception if the public officer's interest in the matter is also held by the public at large, or by a larger class of person. A common example being the permanent fund dividend, which all Alaskan's have an interest in.

If the public officer's action on a matter is considered insignificant or conjectural, then that conduct is not prohibited. There are some things we do as state officers that are just insignificant although they would probably be considered, in a technical sense, to be a violation of the ethics act. For example, they are not allowed to use state resources for personal benefit, however, using a state phone to check on the babysitter or to make a personal call, while technically it would be a violation of the ethics act, it is considered insignificant or conjectural.

There are a series of regulations that accompany the ethics act and the first regulation states that the mere appearance of impropriety is not enough to establish an ethics violation. The intent is to always avoid even the appearance of impropriety, but this regulation states that, for a matter to be prosecuted as an ethics violation, it must cross that line.

AS 39.52.120 are the things that the legislature has established that executive branch officers cannot do. The first item is that the state position may not be used for personal gain or to grant unwarranted benefits or treatment to another. For instance, a friend cannot be hired who is unqualified for a position. A public officer may not use their position to secure other employment or contracts. For example, a public officer cannot offer a contract with the understanding that a position will be made available in return. Public officers cannot use their position to accept or solicit outside compensation. Public officers cannot use state resources to benefit a personal or financial interest, nor can they withhold official action on matters in which there is a personal interest, unless it's considered an insignificant interest, or it is something that is generally held by the public at large. Public officers cannot coerce their subordinates to do something for their own personal or financial benefit, such as forcing a subordinate to contribute to a charity or a political party, forcing them to help move furniture on their time off, or forcing them to terminate someone that the public officer does not like. Public officers cannot attempt to influence the outcome of an administrative hearing by contacting, in private, the hearing officer. All a public officer can do is respond to the hearing officers request for additional information. Public officers cannot use state funds, equipment, or facilities for partisan political purposes. The legislature has established three exceptions to this rule, which are the Governor's residence,

the Governor's communications equipment, and, to a very limited extent, the state aircraft "King Air". If the Governor or Lieutenant Governor uses "King Air" for an official trip, and less than 10% of that official trip is devoted to partisan political activities, that is allowed under the ethics act as long as that percentage of time is reimbursed to the state. If you want to campaign or be political, you must do that on your own time and without using state resources, including your state title. Public officers' state titles are considered a state resource. There can be no politics or political activity on state property, except for the Governor's residence.

The legislature has set up a couple special provisions that apply only to board members. In accordance with AS 39.52.220, at the beginning of each board meeting, members of the board must do an ethics declaration to confirm that they have no conflicts with what is on the agenda, or if there is a conflict, the board member would bring that to their chair's attention. A board member declaring a conflict can be done on the public record, so long as the meeting is being recorded. The chair, as the designated ethics supervisor, makes the determination whether the board members continued involvement in the matter would violate the ethics act, and if they should be recused. Once the chair makes the ruling, the remaining board members, excluding the member with the conflict, can vote on the determination for a final ruling.

In accordance with AS 39.52.160, the general rule is that a public officer cannot advise or assist on a matter that's pending before their unit if the officer's assistance would in any way benefit their personal or financial interests. For non-salaried board members, such as the Personnel Board, a member can step outside of their official board member position and advocate as a member of the public before the board, and advocate for a matter that they have a personal or financial interest in without that being an ethics violation.

In accordance with AS 39.52.130, the general rule is that public officers cannot accept or solicit a gift if that is intended to influence an action or judgement in their official duties. Gifts can include all sorts of things such as loans, money, hospitality, lunch, a place to stay, or tickets to an event. Any gifts from lobbyists are presumed to be improper unless that lobbyist happens to be an immediate family member or a long-time family friend. Any gift that is worth more than \$150 to a public officer or to their immediate family member must be reported, but only if the public officer can take official action that could effect the gift giver, or if the gift is being given because of their position or title. A gift that is given to a public officer for those purposes that is worth less than \$150 should probably still be disclosed if one could reasonably infer from the circumstances that it was given to the public officer for the purposes of influencing an action or judgement. When in doubt, it is best to report by completing the appropriate disclosure form. Any gift at all received from another government, regardless of its value, must be disclosed. This includes all government types such as foreign, federal, State, municipal, or tribal governments. Any gift that a public officer's

family member receives must also be reported, if it would be reportable had the public officer personally receive it. In general, under the regulation, there is the presumption that a gift worth less than \$50 is not intended to influence a public officer. This is intended to cover things like lunches or food prior to a meeting, which is seen as helping to facilitate state business.

In accordance with AS 39.52.140, a current or former public officer cannot use any information in the course of their official duties that could result in a benefit to them, or their immediate family members, if that information has not been publicly disseminated or is confidential by law. For it to be public information, it must be broadcast or published in something like a newspaper, press release, speech, or public testimony. The information must be available to the public and not simply discoverable under a freedom of information act request.

In accordance with AS 39.52.150, a public officer, or an immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects the award, execution, or administration of the state grant, contract, lease, or loan. If a public officer is in a particular position that is responsible for dispensing loans, contracts, or leases, then it cannot be given to an immediate family member in they are in the position of taking official action on it. If, for example, an immediate family member applies for a loan that is competitively given and that they are entitled to, then the public officer must report in a disclosure form that they have an immediate family member who has an interest in a state grant, contract, lease, or loan that is awarded by the agency or board that the public officer serves.

AS 39.52.170 restricts the type of outside employment that a public employee can have, but this does not apply to board members such as the Personnel Board. The head of a principal executive department of the state may not accept employment for compensation outside the agency that the executive head serves. This means that a Commissioner of a state agency cannot have a second job. They may be able to participate in activities not for pay, but in general, the legislature determined that their primary focus must be on running their executive agency. Volunteer work not for pay must also be disclosed. There are some types of outside employment or services that would be considered unacceptable if it is found to be in conflict or incompatible with the public officer's official state duties.

AS 39.52.180 states that a public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action. For the purposes of this subsection, matter includes a case, proceeding, application, contract, determination, proposal or consideration of a legislative bill,

a resolution, a constitutional amendment, or other legislative measure, or proposal, consideration, or adoption of an administrative regulation. The routine processing of documents or the supervising of employees without being directly involved has been found not to be personal or substantial participation. This means that if you are a Commissioner over a large agency, this does not mean that because some members of your agency may have worked on a particular matter, that doesn't mean they had personal or substantial participation that would preclude them from working on it after they left state service. There are some exceptions to this post state employment restriction. A former public officer can contract with their former agency to continue to work on a matter that they worked on while still employed with the state. The former public officer can also get a public interest waiver that is approved by the Commissioner of that agency and the Attorney General. Many public officers cannot work as a lobbyist for one year after leaving state service. This restriction on lobbying also applies to even members of a board or commission that had regulation adoption authority. A former head of a principal department cannot service on a board if that board was regulated by that specific department. If a former public official breaks confidentiality or use insider information, the state's ethics act still applies. If a public officer violates the ethics act by becoming a lobbyist prior to the one-year restriction, then the ethics act still applies.

The penalties for violating the ethics act include a penalty of up to \$5,000 per violation of the act, and the violator can be required to pay back up to twice the amount of the benefit received by virtue of the violation of the act. Any state contract, lease, or loan could also be found void.

If an ethics complaint comes in for the Governor or Lieutenant Governor during a campaign period, that complaint would be on hold pending the completion of the campaign period. The legislature understood that the ethics act should not be used as a strategy or way to derail a campaign by filing potentially spurious or frivolous ethics complaints against a candidate such as the Governor or Lieutenant Governor during a campaign period.

Ed Martin, member of the public, called asking if the board had received his complaint against the Governor, and if his complaint would fall under the category of ethics in a broad sense. His complaint has more to do with individual liberty under 18.U.S.C.242 – deprivation of rights under the color of law. It is currently being investigated by the FBI at his request. Chair Tamagni requested that Mr. Martin submit his complaints, and once they are received, the board will proceed as they deem needed.

7. REVIEW OF QUARTERLY ETHICS REPORTS AND SUBMITTAL COMPLIANCE

Board member Hamilton commented that number of agencies reporting ethics reports are high, and that many of the previous agencies that failed to report during past quarters have caught themselves up and are now current. Maria Bahr

stated that credit for the high ethics reporting goes to their paralegal, Jen Williams, who has been relentless in tracking down the correct agency contacts and in getting them to comply with their reporting requirements. There is a fair amount of turnover, which requires tracking down the new contacts and training them on the correct process.

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

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

9. UPDATE FROM THE DIRECTOR OF PERSONNEL & LABOR RELATIONS

None.

10. OTHER MATTERS THAT MAY COME BEFORE THE BOARD

Chair Tamagni asked that the board get back to meeting quarterly and that they be held in the second month of each quarter. Board member Hamilton asked if travel would be authorized for the quarterly meetings, or if they would need to be done remotely via teleconference. Director Sheehan stated that there is not a travel freeze, but the Governor's Office has asked that travel be reduced due to costs. If the board wishes to have travel approved, Director Sheehan can make that request with the Deputy Commissioner.

Chair Tamagni asked to look at the regulations and statute to address the question of whether the Personnel Board can file complaints. If it is not currently authorized, what would be the changes necessary in the statute to allow the Personnel Board to file complaints?

The board would like to revamp the complaint process to clarify the role that the Personnel Board plays. Chair Tamagni wishes to address any vagueness in the complaint process to ensure that complaints are initially brought to the board's attention so that the chair may appoint an attorney. The attorney does their investigative work but does not send anything until the Personnel Board has an opportunity to meet and review the findings. Board member Johnson would like to know what the board can delegate to their chair as a group. Can the chair be designated to act on behalf of other board members, or does the board need to meet to delegate their approval authority to their chair?

The next board meeting is scheduled for November 12th, 2020.

11. ADJOURNMENT

The meeting adjourned at 12:27 p.m.