

MEETING AGENDA

Meeting: Audit & Risk Committee
Date: January 6, 2023
Time: 8:30 AM
Location: online via webinar and teleconference
Teleconference: (844) 740-1264 / Meeting Number: 2456 769 1048 # / Attendee Number: #
<https://alaskamentalhealthtrust.org/>
Trustees: Kevin Fimon (Chair), Verné Boerner, Rhonda Boyles, Brent Fisher, Anita Halterman, Agnes Moran, John Sturgeon

Friday, January 6, 2023

Page No.

8:30	<u>Call Meeting to Order (Kevin Fimon, Chair)</u> Roll Call Announcements Approve Agenda Ethics Disclosure Approval of Minutes – October 19, 2022	4
8:35	AMPS Review-Investments <ul style="list-style-type: none">• Carol Howarth, CFO	8
8:55	Trustee Training / Role of Fiduciary <ul style="list-style-type: none">• Gene Hickey, Department of Law	13
10:00	Adjourn	

Future Meeting Dates

Full Board of Trustee / Program & Planning / Resource Management / Audit & Risk / Finance

(Updated – December 2022)

- | | | |
|--------------------------------|-----------------------------|------------------------|
| • Program & Planning Committee | January 5, 2023 | (Thu) |
| • Audit & Risk Committee | January 6, 2023 | (Fri) |
| • Finance Committee | January 6, 2023 | (Fri) |
| • Resource Mgt Committee | January 6, 2023 | (Fri) |
| • Full Board of Trustee | January 24-25, 2023 | (Tue, Wed) – Juneau |
| | | |
| • Audit & Risk Committee | April 19, 2023 | (Wed) |
| • Finance Committee | April 19, 2023 | (Wed) |
| • Resource Mgt Committee | April 19, 2023 | (Wed) |
| • Program & Planning Committee | April 20, 2023 | (Thu) |
| • Full Board of Trustee | May 24-25, 2023 | (Wed, Thu) – TBD |
| | | |
| • Audit & Risk Committee | July 25, 2023 | (Tue) |
| • Finance Committee | July 25, 2023 | (Tue) |
| • Resource Mgt Committee | July 25, 2023 | (Tue) |
| • Program & Planning Committee | July 26-27, 2023 | (Wed, Thu) |
| • Full Board of Trustee | August 29-30, 2023 | (Tue, Wed) – Anchorage |
| | | |
| • Audit & Risk Committee | October 19, 2023 | (Thu) |
| • Finance Committee | October 19, 2023 | (Thu) |
| • Resource Mgt Committee | October 19, 2023 | (Thu) |
| • Program & Planning Committee | October 20, 2023 | (Fri) |
| • Full Board of Trustee | November 15-16, 2023 | (Wed, Thu) – Anchorage |
| | | |
| • Audit & Risk Committee | January 4, 2024 | (Thu) |
| • Finance Committee | January 4, 2024 | (Thu) |
| • Resource Mgt Committee | January 4, 2024 | (Thu) |
| • Program & Planning Committee | January 5, 2024 | (Fri) |
| • Full Board of Trustee | Jan 31 – Feb 1, 2024 | (Wed, Thu) – Juneau |

Future Meeting Dates

Statutory Advisory Boards

(Updated – December 2022)

Alaska Mental Health Board / Advisory Board on Alcoholism and Drug Abuse

AMHB: <http://dhss.alaska.gov/amhb/Pages/default.aspx>

ABADA: <http://dhss.alaska.gov/abada/Pages/default.aspx>

Executive Director: Bev Schoonover, (907) 465-5114, bev.schoonover@alaska.gov

- Executive Committee – monthly via teleconference 10am (2nd Wednesday of the Month)
- Winter Meeting: January 11, 2023 1pm – 4pm / via Zoom

Governor’s Council on Disabilities and Special Education

GCDSE: <http://dhss.alaska.gov/gcdse/Pages/default.aspx>

Acting Executive Director: Patrick Reinhart, (907)269-8990, patrick.reinhart@alaska.gov

- Winter Meeting: February 14-16, 2023 / TBD

Alaska Commission on Aging

ACOA: <http://dhss.alaska.gov/acoa/Pages/default.aspx>

Executive Director: Jon Haghayeghi, (907) 465-4879, jon.haghayeghi@alaska.gov

- Spring Meeting: March 1-3, 2023 (tentative) / Juneau TBD

ALASKA MENTAL HEALTH TRUST AUTHORITY

AUDIT & RISK COMMITTEE MEETING

October 19, 2022

8:30 a.m.

WebEx Videoconference/Teleconference

Originating at:

**Alaska Mental Health Trust Authority
3745 Community Park Loop, Suite 120
Anchorage, Alaska**

Trustees Present:

Kevin Fimon, Chair
Brent Fisher
Anita Halterman
Rhonda Boyles
Verne' Boerner
Agnes Moran
John Sturgeon

Trust Staff Present:

Steve Williams
Katie Baldwin-Johnson
Carol Howarth
Miri Smith-Coolidge
Kelda Barstad
Michael Baldwin
Eric Boyer
Valette Keller
Autumn Vea
Allison Biastock
Luke Lind
Debbie DeLong
Travis Welch
Jimael Johnson
Carrie Predeger

Trust Land Office Staff Present

Jeff Green

Also participating:

Bikky Shrestha; Vasily Shportko; Mary David; Patrick Reinhardt; Lesley Thompson; Beverly Schoonover; Josephine Stern.

PROCEEDINGS

CALL TO ORDER

CHAIR FIMON called the meeting to order and began with a roll call. He asked for any announcements. There being none, he moved to the agenda.

APPROVAL OF THE AGENDA

MOTION: A motion to approve the agenda was made by TRUSTEE HALTERMAN; seconded by TRUSTEE STURGEON.

After the roll-call vote, the MOTION was APPROVED. (Trustee Boerner, yes; Trustee Moran, yes; Trustee Halterman, yes; Trustee Sturgeon, yes; Trustee Fisher, yes; Trustee Boyles, yes; Chair Fimon, yes.)

CHAIR FIMON asked for any ethics disclosures. There being none, he moved to the minutes of July 26, 2022.

APPROVAL OF THE MINUTES

MOTION: A motion to approve the minutes of July 26, 2022, was made by TRUSTEE HALTERMAN; seconded by TRUSTEE STURGEON.

After the roll-call vote, the MOTION was APPROVED. (Trustee Halterman, yes; Trustee Sturgeon, yes; Trustee Fisher, yes; Trustee Boyles, yes; Trustee Boerner, yes; Trustee Moran, yes; Chair Fimon, yes.)

ANNUAL AUDIT PRESENTATION/UPDATE

CHAIR FIMON moved to the work from BDO on the audit. He asked CFO Carol Howarth to do the introductions.

CFO HOWARTH introduced Bikky Shrestha, who had been the assurance partner at BDO since 2018, and has been involved with the Trust for a very long time. She explained that a new contract was started this year, and we have a new auditing team. Although BDO is the auditor, the manager of the audit is Vasily Shportko. He is the assurance director at BDO and got his CPA and master's in accounting from the University of North Carolina. He was assigned to the Trust because of his depth of experience in government agencies similar to the Trust, such as AIDEA, the autonomous agencies, and has a depth of experience in all government accounting. She really appreciated this new team that brought a new insight, looked at things slightly differently, giving us the ability to learn from them. She thanked everybody that worked on the audit. She asked Mr. Shrestha and Mr. Shportko to walk through the preview of the audit.

MR. SHRESTHA began by thanking everyone at the Alaska Mental Health Authority for getting all the information together. It was a tough audit this year. There was the implementation of GASB 87, which was one of the harder standards that has come into government accounting, especially if there are a lot of leases, which the Trust has. He stated that staff did everything that needed to be done to get through that. At this point, all are in agreement and on the same page. He added that the draft would not be presented because there is still work to be done on it, and he gave an update. At this point the pension, the PERS, and the OBED portion of that need to be

finished, and we are still waiting for some information from the State for that. He pointed out that the objective of an audit is to obtain reasonable, not absolute, assurance about whether the financial statements are free from material misstatements. They follow auditing standards; do risk assessments; focus on areas that are higher dollar value; and also apply a lot of random sampling throughout the process. They ask about any significant accounting estimates throughout the process. He continued that the scope of the audit had not changed from when they started, and the plan is to issue an unmodified or a clean opinion on the financial statements. All records and information requested has been freely available for inspection. He also talked about corrected and uncorrected misstatements, and noted a couple of corrected misstatements that will show up in the representation letter. They were not aware of any uncorrected misstatements at this point. He presented a couple of different significant deficiencies in internal control. The first was the financial reporting close process, and there were some leases in the GASB 87 schedule that needed to have some corrections. He explained that some of the leases that were treated as out of scope were not, and then there were some changes in the interest rate being used. The next one was for land reporting. Other than that, there were no significant plan changes to the audit. He asked Mr. Shportko if he wanted to add anything.

MR. SHPORTKO replied no.

CFO HOWARTH explained GASB 87 in more detail. It was a ruling that came out of the Accounting Board from the private sector where a lot of companies chose to start leasing their buildings instead of owning them. This increases the return on investment unless people really look into the financial statements, and it is a movement to create greater transparency on financial statements. She stated, in her personal opinion, it to be a best value for publicly traded corporations. The market value reflects the economic value of that lease.

A brief discussion and explanation ensued.

CHAIR FIMON noted that one of the hard things about conducting this audit was not having control of the timing of all the information that comes out.

CEO WILLIAMS stated that the goal was to have something to present, in finality, to the trustees at the November board meeting.

CHAIR FIMON thanked Ms. Howarth and all the staff helping with the accounting, the TLO, and everyone who chipped in. He also thanked Mr. Shrestha and Mr. Shportko at BDO and their staff. He moved forward to the staff report on the Risk Management Plan.

STAFF REPORT

RISK MANAGEMENT PLAN

CEO WILLIAMS stated that the overview of all of the various elements of the Risk Management Plan was gone through at the last Audit Risk Committee meeting. He continued that there were various places that came into play for the Trust that make up the plan, and that we have to adhere to in the course of the day-to-day business.

CHAIR FIMON asked CFO Howarth to walk through it.

CFO HOWARTH noted that they had their own standard operating procedures at the Trust, and she focused the discussion on what was mitigating the risks, and not on the broader governance topics. The charter does state that trustees review the Risk Management Plans, and there are comprehensive elements in it. Recommended was focusing on the grant process; the Authority Grants and the MHTAAR grants. She focused on the Authority Grants, and stated that she would focus on the MHTAAR Grants closer to the next budgeting process, because they are different. She explained that in the regulations, the Administrative Code, there were other grant processes, which are small grants, the competitive grants, and the designated grants. They could be used, if needed. But the Trust strategy now focuses on the partnership grant in the focus area, as well as the mini-grants and the emergency grants. She continued, focusing on the partnership and the focus-area grants. The high-level perspective of the Authority Grant life cycle is getting a funding request, getting funding approval and the monitoring of it, and then it was closed at the completion of that grant. There are two risk-mitigation tools: the rules and procedures, and then controls internal to the process. She explained this in greater detail. In terms of financial controls, there were a lot of policies and procedures outlined.

A discussion and clarification ensued.

CEO WILLIAMS stated, for the record, that for-profit organizations are not filtered out, and he went over the parameters of the grants.

TRUSTEE HALTERMAN asked if there was a perception that for-profit businesses were denied Trust funds. She stated that there had been some requested that were denied for legitimate reasons, and there was a misunderstanding. She suggested that a better job of educating the public in that area could be done. She added that she would like to see some more person-centered measurements for the grant awards. It is important to focus on the beneficiaries. She requested receiving some kind of feedback from staff about which agencies have grants funded that received technical support from the Trust. She asked for a report to be generated to identify that, which may help clarify some of the processes where partners are engaged.

CEO WILLIAMS thanked the trustees for the flexibility. He noted that this type of conversation is necessary so that the processes provided are in place to assure that Trust funds are being approved appropriately, which is how the partners and communities are engaged in the process.

CHAIR FIMON thanked the staff and asked for a motion for adjournment.

MOTION: A motion to adjourn the meeting was made by TRUSTEE HALTERMAN; seconded by TRUSTEE FISHER.

After the roll-call vote, the MOTION was APPROVED. (Trustee Halterman, yes; Trustee Fisher, yes; Trustee Boyles, yes; Trustee Sturgeon, yes; Trustee Boerner, yes; Trustee Moran, yes; Chair Fimon, yes.)

(Audit & Risk Committee adjourned at 9:58 a.m.)



Asset Management Policy Statement

Investment Policy Review

Audit & Risk Committee
January 6, 2023

Trust
Alaska Mental Health
Trust Authority

AMPS Purpose

Delineates Trustee asset management philosophy and practices

Clarity for stakeholders the management objectives, goals and restrictions



AMPS Investment Guideline Summary

Investment Manager	Risk Profile	Asset Allocation
Department of Revenue - GeFONSI	Low	Established by Manager
Department of Revenue - Budget Reserves	Moderate	Established by Manager with Trust Direction
Alaska Permanent Fund Corporation - Principal and Budget Reserves	Moderate	Established by Manager
Trust Land Office - Commercial Real Estate	Moderate	Established by the Trust
Trust Land Office - TLODA (Including PRI)	Moderate	Established by Trust

*Bold denotes where Trustees have control over asset allocation



AMPS Controls match objectives with metrics or review

Focus

- **Liquid assets:** determine ability to achieve investment and land management objectives; alignment of AMPS to these objectives (quarterly)
- **Non-liquid assets:** TLO financial performance (annually)

Risk factors considered

- Time horizon
- Risk tolerance
- Asset allocation
- Performance expectations



Questions/Discussion



Alaska Mental Health Trust Authority

FIDUCIARY TRAINING

EUGENE F. HICKEY

SENIOR ASSISTANT ATTORNEY GENERAL

STATE OF ALASKA, DEPARTMENT OF LAW

JANUARY 6, 2023

Objectives

- ▶ Define fiduciary and fiduciary duty
- ▶ Briefly discuss unique nature of the Alaska Mental Health Trust & Trust Authority
- ▶ Identify trust beneficiaries
- ▶ Identify specific fiduciary duties
- ▶ Discuss how fiduciary duties are carried out

What is a fiduciary?

► **Fiduciary** (noun) means:

One who transacts business, and handles money and property, not for self-interest, but for the benefit of another, “implying and necessitating great confidence and trust, and a high degree of good faith”

What is fiduciary duty?

A **fiduciary duty** is when one party must act for another. The fiduciary is entrusted with the care of property or funds. *It is a duty of a third party who stands in a position of trust or confidence with another person to act with due regard for the benefit and interest of that person.*

Fiduciary Duty for AMHTA Trustees

► Sources

- Enabling Act
- State statutes: AS § 37.14.001 – §37.14.099
AS § 44.25.200 – §44.25.295
- Weiss settlement
- Common Law:
 - Trustee Qualifications: AS § 44.25.210(c)
 - Executive Branch Ethics Act: AS § 39,52.010 – § 39.52.965
- Uniform Prudent Investor Act likely applies to AMHTA

Alaska Mental Health Enabling Act

- ▶ In 1956, Congress passed the Alaska Mental Health Enabling Act.
- ▶ Section 202(e) of the Enabling Act provided in part:

All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, **shall be administered** by the Territory of Alaska **as a public trust** and such proceeds and income **shall first be applied to meet the necessary expenses of the mental health program of Alaska.**

Weiss litigation and HB 201

- ▶ In 1978, the Alaska legislature passed a law re-designating the land received under the Enabling Act as general grant land managed by DNR. The State basically terminated the Trust without authority to do so.
- ▶ This led to the Weiss class action lawsuit, filed in 1982. Beneficiaries argued that the State had failed to uphold its fiduciary responsibilities to mental health beneficiaries. It ultimately concluded with the Weiss settlement and in 1994, the related statutory law enacted through passage of HB 201.

AMHTA's Purpose

The statutory purpose of the Alaska Mental Health Trust Authority is

- (1) **to ensure an integrated comprehensive mental health program, and**
- (2) to administer the office of the long-term care ombudsman.

The Weiss settlement echoes the same requirement that AMHTA ensure an integrated comprehensive mental health program for the state.

AMHTA as a public trust

- ▶ The Alaska Mental Health Trust is a **public trust** created under federal law.

AS § 44.25.200

- ▶ As a public trust created under federal law, private trust law principles apply.

Application of private trust law principles; duty to beneficiaries.

- ▶ For private trusts, the trustee duty is to administer the trust **solely in the interest of the beneficiaries**.
- ▶ The **full value of the trust**, including lands held, **must be utilized to provide the most substantial support to the beneficiaries**, and that only beneficiaries profit from the Trust.

USE OF TRUST SETTLEMENT INCOME ACCOUNT

- ▶ (1) the awarding of grants and contracts in fulfillment of the authority's purpose to ensure an integrated comprehensive mental health program for the state;
- ▶ (2) obtaining private and federal grants for a purpose described in (1) of this subsection;
- ▶ (3) soliciting gifts, bequests, and contributions for a purpose described in (1) of this subsection;
- ▶ (4) reimbursement to
 - ▶ (A) the Alaska Permanent Fund Corporation for the costs of managing the principal of the mental health trust fund; and
 - ▶ (B) the Department of Natural Resources for the cost of managing mental health trust land;

AS 37.14.041

USE OF TRUST SETTLEMENT INCOME ACCOUNT, cont.

- ▶ (5) offsetting the effect of inflation on the value of the principal of the mental health trust fund; and
- ▶ (6) subject to AS 37.07 (Executive Budget Act), meeting the necessary administrative expenses of the authority that are required for it to properly discharge its responsibilities.
- ▶ (b) If money in the mental health trust settlement income account is not needed to meet the necessary expenses of the state's integrated comprehensive mental health program, the authority shall transfer the money to the unrestricted general fund for expenditure through legislative appropriation for other public purposes.

AS 37.14.041

USE OF MONEY IN THE AMHTA TRUST SETTLEMENT INCOME ACCOUNT

- ▶ Expenditures must provide for a reasonable level of necessary services to persons who:
- ▶ (1) are mentally ill;
- ▶ (2) have an intellectual disability, a developmental disability, or both;
- ▶ (3) are chronic alcoholics suffering from psychoses;
- ▶ (4) as a result of senility, suffer major mental illness; and
- ▶ (5) need mental health services, as the legislature may determine.

AS 44.25.290(b)

USE OF MONEY IN THE AMHTA TRUST SETTLEMENT INCOME ACCOUNT, continued

- ▶ The integrated comprehensive mental health program for which expenditures are made under this section
- ▶ (1) must give priority in service delivery to persons who
- ▶ persons who, as a result of a mental disorder or of a disorder identified in (b) of this section,
- ▶ (A) may require or are at risk of hospitalization; or
- ▶ (B) experience such major impairment of self-care, self-direction, or social and economic functioning that they require continuing or intensive services;
- ▶ (2) may, at the discretion of the board, include services to persons who are not included under (b) or (c)(1) of this section.

AS 44.25.290(c)

Alaska Mental Health Trust Authority as Trustee – AS § 37.14.007

As Trustee, AMHTA has **a duty to the public and the trust beneficiaries** to:

- (1) administer the trust consistent with AS § 37.14.009 in the interest of the beneficiaries;
- (2) keep and render clear and accurate accounts with respect to the administration of the trust;
- (3) make public and available complete and accurate information as to the nature and amount of the trust property;
- (4) exercise a high degree of care in administering the trust;
- (5) take reasonable steps to take and keep control of the trust property;

Key Statutory Duties

- ▶ Per AS § 44.25.200, the Authority is required to administer the trust established under the Alaska Mental Health Enabling Act of 1956.
- ▶ Per AS § 37.14.009, the Authority has a **fiduciary obligation** to ensure that the assets of the trust are managed consistent with the requirements of the Alaska Mental Health Enabling Act.

Key Statutory Duties

- ▶ **Administer the mental health trust settlement income account.**

- ▶ If the Authority determines that there is a surplus of money in the account above the amount sufficient to meet current and projected cash expenditure needs of the Authority, **the surplus shall be invested by the Authority as provided in AS § 37.10.071 for the making of investments by the fiduciary of a state fund.** Income earned on investments made under this subsection may be retained by the authority and expended under AS § 37.14.041.

Key Statutory Duties

- ▶ **preserve and protect the trust corpus;**
- ▶ **review and consider the recommendations submitted by**
 - (a) the Advisory Board on Alcoholism and Drug Abuse re services from chronic alcoholics suffering from psychoses;
 - (b) the Alaska Mental Health Board re services for the mentally ill;
 - (c) the Alaska Commission on Aging re the needs of older Alaskans who suffer as a result of senility or major mental illness; and,
 - (d) the Governor's Council on Disabilities and Special Education re individuals who have an intellectual and/or developmental disability;
- ▶ **adopt bylaws governing its meetings, selection of officers, proceedings, and other aspects of board procedure;**

Trust fund management

AMHTA has a **fiduciary obligation** to ensure that the assets of the trust (cash and land) are managed consistent with the requirements of the Enabling Act.

- ▶ In carrying out this duty, AMHTA must contract with APFC and DNR.
- ▶ The “mental health trust fund” is an AMHTA fund and consists of the cash principal of the trust.
 - ▶ Managed by the APFC
 - ▶ APFC has a number of obligations to AMHTA including:
 - ▶ Investment responsibilities
 - ▶ Financial reporting
 - ▶ Periodic advice to AMHTA when contemplating changes to long-range investment policies are contemplated, and opportunity to comment.

Trust land management

- ▶ DNR is required by statute to manage the land assets in conformity with the principles of the Enabling Act.
- ▶ Every year, DNR must provide the Authority with a report including
 - (i) a description of all land management activities undertaken during the prior year;
 - (ii) an accounting of all income and proceeds generated from trust land;
 - (iii) an explanation of the manner in which the income and proceeds were allocated between the mental health trust fund and the mental health trust settlement income account
- ▶ **The AMHTA board is required to adopt regulations that provide for allocation between principal and income of money received from the management of mental health land, which allocation must be in the long-term best interest of the trust and its beneficiaries.**

As fiduciary of the trust's settlement income account

- ▶ The Authority is charged with administration of the Trust's settlement income account.
- ▶ If the Authority determines that there is a surplus in the account, the surplus shall be invested by the Authority as provided in AS § 37.10.071 for the making of investments by the fiduciary of a state fund.
- ▶ Income earned on investments may be retained by the authority and expended under AS § 37.14.041 (uses of trust settlement income account).

TRUSTEE QUALIFICATIONS

► AS § 44.25.210(c)

A member of the board appointed by the Governor under (b) of this section may not

(1) be an officer or employee of the state; or

(2) within the preceding two years or during the member's term of office have an interest in, served on the governing board of, or been employed by an organization that has received, during that same period, money from the mental health trust, trust settlement income account under a grant or contract for services

Prudent Investor Rule

AS § 37.10.071(c):

the fiduciary of a state fund **shall apply the prudent investor rule and exercise the fiduciary duty in the sole financial best interest of the** fund entrusted to the fiduciary. Among beneficiaries of a fund, the fiduciaries **shall treat beneficiaries with impartiality.**

Prudent Investor Standard of Care

- ▶ A trustee shall invest and manage trust assets as a prudent investor would **by considering the purposes, terms, distribution requirements, and other circumstances of the trust**. In satisfying this standard, **the trustee shall exercise reasonable care, skill, and caution.**

AS § 37.10.071 Investment Powers and Duties

As fiduciary of a state fund, when making investments, the Board **shall**:

- (1) act as official custodian;
- (2) receive all items of cash and investments;
- (3) collect and deposit the principal of and income from owned or acquired investments;
- (4) invest and reinvest the assets in accordance with this section;
- (5) receive and spend appropriations to cover the cost of the exercise of duties under this section;
- (6) exercise the powers of an owner with respect to the assets;

AS § 37.10.071 Investment Powers and Duties (*continued*)

- (7) perform all acts, not prohibited by this section, whether or not expressly authorized, that the fiduciary considers necessary or proper in administering the assets;
- (8) maintain accounting records in accordance with GAAP;
- (9) engage an independent CPA to conduct an annual audit of the financial condition and investment transactions;
- (10) enter into and enforce contracts or agreements considered necessary, convenient, or desirable for the investment purposes of this section; and
- (11) when choosing to acquire or dispose of investments, secure competitive national or international market rates or prices, or the equivalence of those rates or prices in the judgment of the fiduciary.

Discretionary Powers

As a fiduciary of a state fund, the Board as fiduciary, or its designee, **may:**

- (1) **delegate investment, custodial, or depository authority on a discretionary or nondiscretionary basis to officers or employees of the state or to independent firms, banks, financial institutions, or trust companies by designation through appointments, contracts, or letters of authority;**
- (2) acquire or dispose of investments;
- (3) concentrate or diversify investments as the fiduciary considers appropriate;
- (4) protect the market value or the rate of return of the investments;
- (5) lend assets, under an agreement and for a fee, against deposited collateral of equivalent market value;

Discretionary Powers (*continued*)

- (6) borrow assets on a short-term basis;
- (7) hold investments in bearer or registered form in the name of the state, a fund, or authorized nominees;
- (8) utilize consultants, advisors, custodians, investment services, and legal counsel for assistance in investment matters on either a continuing or a limited-term basis and with or without compensation;**
- (9) declare records to be confidential and exempt from AS 40.25.110 and 40.25.120 if the records contain information that discloses the particulars of the business or the affairs of a private enterprise, investor, borrower, advisor, consultant, counsel, or manager.

YOU BE THE JUDGE



<https://www.youtube.com/watch?v=Aac7rQMZjaY>

EXECUTIVE BRANCH ETHICS ACT ("ETHICS ACT")

- ▶ Trustees subject to the Ethics Act – AS § 39.52.010 – §39.52.965
- ▶ *Ethics Act Policy*
- ▶ (1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;
- ▶ (2) a code of ethics for the guidance of public officers will
 - ▶ (A) discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities;
 - ▶ (B) improve standards of public service; and
 - ▶ (C) promote and strengthen the faith and confidence of the people of this state in their public officers;
- ▶ (3) holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics;

EXECUTIVE BRANCH ETHICS ACT ("ETHICS ACT") (*continued*)

- ▶ (4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;
- ▶ (5) in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;
- ▶ (6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and
- ▶ (7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.
 - ▶ (b) The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission, that the holding of such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute.

Scope of Ethics Act

AS § 39.52.110

- ▶ Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's
 - (1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or
 - (2) action or influence would have insignificant or conjectural effect on the matter.
- ▶ The attorney general, designated supervisors, hearing officers, and the personnel board must be guided by this section when issuing opinions and reaching decisions.
- ▶ Stock or other ownership interest in a business is presumed insignificant if the value of the stock or other ownership interest, including an option to purchase an ownership interest, is less than \$5,000.

SUMMARY

- ▶ A public officer may not misuse their official position either for personal or financial benefit. AS § 39.52.120
- ▶ A public officer may not receive gifts of any sort that are a benefit to the officer's personal or financial interests if it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment
 - Notice of receipt of a gift with a value in excess of \$150, including the name of giver and description of gift and its approximate value, must be provided to the designated supervisor within 30 days after the date of its receipt - AS § 39.52.130
 - This applies to a gift received by a family member due to the officer's official duties in which case, obligation to report the gift if it would otherwise have to be reported –
AS §39.52.130
- ▶ A public officer may not disclose or use non-public information that could in any way result in the receipt of any benefit for the officer or an immediate family member. AS § 39.52.140

SUMMARY (*continued*)

- ▶ 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 unless the state grant, contract, or lease was competitively solicited (with multiple exceptions).
AS § 39.52.150
- ▶ A public officer may not represent persons if the representation is for compensation or without compensation but would render a benefit to a personal or financial interest of the public officer.
AS § 39.52.160
- ▶ There are certain restrictions on outside employment while serving on the board and after leaving state service. AS § 39.52.170 and AS § 39.52.180
- ▶ A public officer may not aid anyone in any of the above prohibited transactions. AS § 39.52.190
- ▶ A public officer who is involved in a matter that may result in a violation of the above prohibited actions **must disclose** the matter. AS § 39.52.220

REPORTING AND PENALTIES

- ▶ A person may report a potential violation of the above prohibitions by a public officer. AS § 39.52.230
- ▶ Those who violate the Ethics Act may be required to pay restitution. AS § 39.52.410
- ▶ In addition to any other cause an agency may have to discipline a public employee, an agency may reprimand, demote, suspend, discharge, or otherwise subject an employee to agency disciplinary action commensurate with the violations of this chapter. AS § 39.52.420
- ▶ Civil penalties of up to \$5000 may be levied. AS § 39.52.440
- ▶ In addition, may have to pay twice the amount of any financial benefit that was gained due to violation of the Ethics Act. AS § 39.52.450
- ▶ These penalties would be in addition to any criminal penalties. AS § 39.52.460
- ▶ The attorney general may issue advisory opinions interpreting the provisions of the Ethics Act. AS § 39.52.240

HOW TO AVOID CONFLICTS OF INTEREST

- ▶ Disclose and recuse if unavoidable
- ▶ Very technical, tenuous conflicts may be okay – Get advice
- ▶ “Recusal” means abstaining from all consideration and voting
- ▶ Do not accept any kick-backs or anything of personal or financial value (gifts, preferential treatment in a job interview, etc.) to you or a family member

Summary/Takeaways

- ▶ Purpose to ensure comprehensive integrated mental health program (public trust)
- ▶ Fiduciary duty to protect corpus of mental health trust fund
- ▶ Duty to invest surplus of settlement income account
- ▶ Fiduciary duty to beneficiaries
- ▶ No ideal prudent behavior for all situations and times
- ▶ Can rely on expert advisors or delegate

How can a Part-Time Board carry out these obligations?

- ▶ Only with substantial assistance
- ▶ AMHTA's comprehensive “toolkit”:
 - ▶ staff,
 - ▶ authority to engage managers, consultants, and other professionals,
 - ▶ Setting prudent standards through regulations, policies, and procedures,
 - ▶ Monitoring budget, monitoring performance of delegates,
 - ▶ Governance practices.

How To Use the Toolkit?

- ▶ Process – have it, follow it, refine it
 - ▶ Structure/governance
 - ▶ Policies & Procedures
 - ▶ Compliance
 - ▶ Reporting
 - ▶ Monitoring
 - ▶ Obtain and use resources

Delegated Duties

- ▶ Generally, fiduciaries are not liable for breach of duty if the delegation is prudent or assigned by law to another person.
- ▶ A fiduciary may still be liable for breach of a delegated duty if the fiduciary:
 - ▶ Participates in or conceals a breach
 - ▶ Enables a breach
 - ▶ Knows about a breach and does not attempt to remedy

Indemnification by State; limits

- ▶ AS § 37.10.071(e): “The state shall defend and indemnify the fiduciary or an officer or employee of the state against liability under (d) of this section **to the extent that the alleged act or omission was performed in good faith and was prudent** under the applicable standard of prudence.”

Conclusion

- ▶ Trustees have enormous responsibility
- ▶ Use the right tool for the right job
- ▶ When in doubt, ask
- ▶ Questions?