

ALASKA MENTAL HEALTH TRUST AUTHORITY
SPECIAL FULL BOARD OF TRUSTEES MEETING
January 14, 2021
2:00 P.m.
WebEx Videoconference/Teleconference

Originating at:
3745 Community Park Loop, Suite 120
Anchorage, Alaska

Trustees Present:

Chris Cooke, Chair
John Sturgeon
Ken McCarty
Rhonda Boyles
Verne' Boerner
Annette Gwalthney-Jones
Anita Halterman

Trust Staff Present:

Mike Abbott
Steve Williams
Carol Howarth
Miri Smith-Coolidge
Kelda Barstad
Michael Baldwin
Katie Baldwin-Johnson
Valette Keller
Allison Biastock

Trust Land Office:

Wyn Menefee
Sarah Morrison
Jusdi Doucet

Also participating:

Stuart Goering; Josephine Stern; Brenda Moore.

PROCEEDINGS

CALL TO ORDER

CHAIR COOKE called the special meeting to order and called the roll. He continued that Trustee Halterman was not yet on-line, but there are six members of the Board for a sufficient quorum. He asked for an updated information sheet for the Board of Trustees from staff. He moved to the approval of the agenda.

APPROVAL OF AGENDA

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

CHAIR COOKE called the roll-call vote.

After a roll-call vote, the MOTION WAS APPROVED. (Trustee Boyles, yes; Trustee Fisher, yes; Trustee Sturgeon, yes; Trustee Boerner, yes; Trustee Cooke, yes.)

CHAIR COOKE asked for any ethics disclosures. There being none, he moved on to the questions for the open session that were raised or carried over from the previous committee meeting a week or so ago. He stated that Mr. Abbott and Mr. Goering were present to resolve all the questions about the Open Meetings Act, especially in light of technology use and other issues that were represented at the previous meeting.

MR. ABBOTT stated that the questions discussed were forwarded to Stuart Goering, and he asked Mr. Goering to continue.

MR. GOERING stated that he received three questions. The first one was: "Is it an ethical violation for questions intended for open-meeting disclosure but withheld to filtered nonmeeting dissemination to occur?" As an initial matter in answering, it is not primarily an ethics issue and not necessarily an Open Meetings Act question. The Open Meetings Act is primarily addressed towards making the meetings accessible to the public and to make government's business transparent. He continued that there are other statutes which control the dissemination of information outside of the public-meeting context. He added that any materials that are considered public have to be made available to people who are at teleconference locations and if at some point in the future, would, by implication, need to be available at the live location. He recommended that in order to make the public record complete, responsive things should be made available to the public without request in the same way that materials considered in a public meeting would be available without request. That is not absolutely a legal requirement, but it is a best practice. Technically, it would be fine to wait for a public-records request.

CHAIR COOKE noted that Anita Halterman had joined the meeting at the beginning of the presentation. He asked Mr. Goering to continue.

MR. GOERING stated that the second question is: "Is it ethical for trustees to give limited time whereas the presenters dominate the supposed time allotted for the topics?" He replied that this was not really an ethics question as much as a matter of collegiality of the trustees and conduct of the meeting. The presiding officers at meetings have a fair amount of discretion in terms of how to conduct meetings, and the allocation of time is usually within the discretion of the Chair.

He continued that the purpose of having a board of trustees is for there to be an opportunity not just to receive information, but also to have a robust and complete discussion about the subject matter that is being considered by the board. He added, as a result, because the context of this question was at a committee meeting, committees relatively rarely have the ability to do anything more than recommend, and there is usually additional opportunity for discussion and questions at the board level before an actual decision is taken. It does not really raise an ethical or legal issue unless it gets fairly extreme.

CHAIR COOKE stated that that question leads into the question about deferring questions to a time or to do it in writing after the meeting rather than during the meeting.

MR. GOERING moved to the third question: “Again, does it violate Open Meetings disclosure for a question to be deferred until later for trustees when the public is not availed of the answer?” The way he understood this question was there was a commitment by presenters to follow up by e-mail and then that response would be distributed to trustees. He stated that tied into the answer of the first question that documents are considered and are available to the public as easily as if they were considered at the meeting itself. He continued that it is also within the discretion of the presiding officer and subject to the collegiality of the board or the committee as a whole to defer subject matter to either a later meeting or to offline discussion. He added that, in general, if trustees are hearing it, it should be something that is shared generally with trustees. Everyone does have different levels of experience and different interests, and it is not wrong for a trustee, under the Open Meeting Act, as long as there are not more than three members, or a quorum of that committee in on those sessions to follow-up sessions, then there is no Open Meetings Act issue with that. He stated that what was implicated here is that time ran out and that questions were not wanted to go unanswered. What was chosen was to follow up in writing as opposed to scheduling another agenda item for a future committee meeting to address the subject further.

CHAIR COOKE recognized Trustee McCarty, since he raised these issues.

TRUSTEE McCARTY stated that the key clause was that the purpose of the trustees of any board is a collective group of minds to discuss the issue of business, and if the collective group of minds is unable to be there, that it makes it difficult to bounce the thoughts around. He continued that the concern is the aspect of on the record and what the mechanism in that Trust that the public can go to and get the information quickly. He added the responsibility to reflect that in minutes.

CHAIR COOKE asked if Trustee McCarty had any other matters to direct to Mr. Abbott or Mr. Goering.

TRUSTEE McCARTY asked what is the mechanism requirement to notify the public; what is the mechanism to put in the minutes if it is being stated that it will be sent out later.

CHAIR COOKE asked Mr. Abbott how is the record of subsequent communications between a trustee and a presenter maintained.

MR. ABBOTT replied that, unless an item is brought up again at a subsequent meeting, a special effort to maintain a discrete record of or pose subsequent information on the Website is not made. He continued that it is possible to post information that is prepared after a meeting along

with the information that was posted for the preparatory materials, but that is not being done at this time. He added that if that is a preference of the trustees, or a recommendation of counsel, a place on the Website can be built along with the other meeting materials. He asked if Mr. Goering had anything further in response.

MR. GOERING replied that other agencies handle this question in a variety of different ways. Some will attach follow-up materials to the agenda for the next meeting under old business. Some will attach them to the minutes at the time they are brought to the board or the committee at the next meeting as part of the meeting minutes. Some have a link on their Website that is part of the meeting link. He added that the Legislature has encouraged agencies to always go on the side of greater transparency rather than lesser. He stated that the trustees should think carefully about logistically how to do things like this in a way that fits in with the overall management of the board and the Trust as a whole.

CHAIR COOKE stated that it seems that some of this concern is directed at meeting procedure, whether things are postponed or deferred or moved forward in the interest of time. He continues that if someone wanted to submit a request for additional information from a presenter after the meeting, that person could indicate that in an e-mail or communication whether or not they want the question and response to be part of the record of the meeting.

MR. GOERING stated that was an excellent way to identify the things that need special attention as opposed to them just being part of the ordinary course of business.

CHAIR COOKE asked Trustee McCarty if he had anything further.

TRUSTEE McCARTY replied no, and thanked Mr. Goering.

CHAIR COOKE recognized Trustee Halterman.

TRUSTEE HALTERMAN stated that she had an observation. She noted that she wrote regulations for the Department of Health and Social Services for about four years, and the Administrative Procedure Act was something that she was very familiar with. She continued that it would be prudent for the board to support having that dialogue and deliberation put on the record as opposed to submitted questions.

TRUSTEE GWALTHNEY-JONES had no questions.

TRUSTEE BOYLES stated that when she had a question that she would call Mr. Abbott or the staff. She thanked Trustee McCarty for raising the issue.

TRUSTEE STURGEON stated he was fine.

TRUSTEE BOERNER stated she had no questions and supported what was said.

CHAIR COOKE stated that he would certainly see a distinction between postponing full discussion on a matter that is an action item as opposed to one that is more information-sharing. He stated concern on not having a full discussion but still going ahead and voting on something with the idea that more questions would come up later. He added that seemed inappropriate.

MR. GOERING clarified that the Administrative Procedures Act does not have a lot of relevance to the Trust work except when adopting regulations. The primary source for this conversation was the Open Meetings Act, and the questions were framed in terms of ethical issues. The Executive Branch Ethics Act does not directly impact this. The Records Management Act and the Public Records Act do have relevance, as well, in this context. He stated that Chairman Cooke correctly stated that there is a distinction to be made between agenda items in committees where no final decision was being made versus board meetings where a final decision is being made. It would be extremely unwise from a legal perspective to cut off discussion or questions when an issue was going to be subject to a final vote.

CHAIR COOKE thanked Mr. Goering, and asked Trustee McCarty for anything further.

TRUSTEE McCARTY stated appreciation for the discussion and the advice from Mr. Goering. He encourages the trustees to explore designing something for the Website for the public to see.

CHAIR COOKE moved to the other matter on the agenda, a legal consultation which would be done in an executive session. He asked for a motion for an executive session.

MOTION: A motion to move the Board to go into executive session for a legal consultation regarding the Governor's proposed Fiscal Year '22 Budget in accordance with the Open Meetings Act, AS 44.62.310(c) was made by TRUSTEE HALTERMAN; seconded by TRUSTEE GWALTHNEY-JONES.

CHAIR COOKE called the question.

After the roll-call vote, the MOTION WAS APPROVED. (Trustee Boerner, yes; Trustee Boyles, yes; Trustee Gwalthney-Jones, yes; Trustee McCarty, yes; Trustee Sturgeon, yes; Trustee Cooke, yes.)

(Executive Session from 2:35 p.m. until 3:45 p.m.)

CHAIR COOKE called the meeting back to order and took the roll. He stated that Trustee Sturgeon had to leave, and noted that there was a quorum. He stated that no action was taken during the executive session. He continued that the agenda was complete and thanked Mr. Abbott and Mr. Goering for their participation. He asked for any other matters of business to consider. There being none, he asked for a motion to adjourn.

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

CHAIR COOKE thanked Trustee McCarty for all his participation, and noted that this would be his last time in a meeting as a trustee.

TRUSTEE McCARTY stated that it was an honor and a pleasure.

CHAIR COOKE stated appreciation for his efforts and the energy, special knowledge, and wisdom brought to the trustees. He wished Trustee McCarty well in Juneau. He called the

question.

After the roll-call vote, the MOTION WAS APPROVED. (Trustee Boerner, yes; Trustee Boyles, yes; Trustee Gwalthney-Jones, yes; Trustee McCarty, yes; Trustee Cooke, yes.)

(Special Full Board meeting adjourned at 3:53 p.m.)