

STATE OF ALASKA
BIG GAME COMMERCIAL SERVICES BOARD



Teleconference Meeting of

9-10am July 22, 2016

Juneau, Alaska

Board Packet

**BIG GAME COMMERCIAL SERVICES BOARD
TELECONFERENCE**

**July 22, 2016
Roll Call**

Board Member	Present	Absent
Kelly Vrem		
Karen Polley		
David Brown		
Nicholas Jackson		
Michele Metz		
Gene Peltola		
James (Tom) Atkins		
James (David) Jones		
Henry D. Tiffany IV		

Motion Form

Chair will order at ease and motion will be read into the record before vote.

Date: July 22, 2016

Motion offered by: _____

Seconded by: _____

Motion: _____

Board Member	Approve	Deny	Abstain	Absent
Kelly Vrem				
Karen Polley				
David Brown				
Nicholas Jackson				
Michele Metz				
James (David) Jones				
James (Tom) Atkins				
Gene Peltola				
Henry D. Tiffany IV				

**STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
ALASKA BIG GAME COMMERCIAL SERVICES BOARD**

Board Members:

**Kelly Vrem, Chair,
Master Guide-
Outfitter**

**Karen Polley, Vice
Chair, Public
Member**

**Michele Metz,
Private Landholder**

**James (David)
Jones, Transporter**

**James (Tom) Atkins,
Transporter**

**Gene Peltola, Public
Member**

**Nicholas Jackson
Private Landholder**

**David Brown, Board
of Game**

**Henry D. Tiffany IV,
Master Guide-
Outfitter**

TELECONFERENCE AGENDA

**9:00am-11:00am, July 22, 2016
Juneau SOB 9th floor A-South room
1-800-315-6338
Access Code: 52536**

<u>TIME</u>	<u>TOPIC</u>	<u>LEAD PERSON</u>
1. 9:00A.M.	Call to Order/Roll Call	Chair
2.	Petition to amend 12 AAC 75.930	Chair
3. 10:00A.M.	Executive Session	Chair
4.	OAH NO. 15-1346-GUI	Chair
5.	Case No. 2016-000757	Chair
6. 11:00A.M.	Adjournment	Chair

ETHICS DISCLOSURE FORM

State of Alaska Department of Law

Who Is My Designated Ethics Supervisor?

Every state public officer, employee or board or commission member, has a designated ethics supervisor.

Executive Agencies

The ethics supervisor for each agency is the Commissioner or a senior manager to whom the Commissioner has delegated the function. The current ethics supervisor for each agency is listed below. The ethics supervisor for a Commissioner is Guy Bell, Director of Administrative Services in the Office of Governor, by delegation from the Governor.

Boards and Commissions

The Chair of each board and commission serves as the ethics supervisor for the other members and any executive director. The ethics supervisor for the Chair is Guy Bell, Director of Administrative Services in the Office of Governor, by delegation from the Governor. If a board or commission employs staff, the executive director serves as the ethics supervisor for these employees.

Public Corporations

The Chair of the board serves as the ethics supervisor for the other members of the board and any executive director. The executive director is the ethics supervisor for employees of the corporation.

Office of the Governor

The ethics supervisor for the Governor and Lieutenant Governor is the Attorney General. By delegation from the Governor, the ethics supervisor for the staff of the offices of the Governor and Lieutenant Governor is Guy Bell, Director of Administrative Services.

University of Alaska

By delegation of the University President, the ethics supervisor for university employees is Associate General Counsel Andy Harrington.

EXECUTIVE BRANCH AGENCIES

State of Alaska Department of Law

Ethics Information for Members of Boards & Commissions (AS 39.52)

Introduction

This is an introduction to AS 39.52, the Alaska Executive Branch Ethics Act. This guide is not a substitute for reading the law and its regulations. State board and commission members who have further questions should contact their board chair or staff.

The Ethics Act applies to all current and former executive branch public employees and members of statutorily created boards and commissions.

Scope of Ethics Act (AS 39.52.110)

Service on a state board or commission is a public trust. The Ethics Act prohibits substantial and material conflicts of interest. Further, board or commission members, and their immediate family, may not improperly benefit, financially or personally, from their actions as board or commission members. The Act does not, however, discourage independent pursuits, and it recognizes that minor and inconsequential conflicts of interest are unavoidable.

Misuse of Official Position (AS 39.52.120)

Members of boards or commissions may not use their positions for personal gain or to give an unwarranted benefit or treatment to any person. For example, board members may not:

- use their official positions to secure employment or contracts;
- accept compensation from anyone other than the State for performing official duties;
- use State time, equipment, property or facilities for their own personal or financial benefit or for partisan political purposes;
- take or withhold official action on a matter in which they have a personal or financial interest; or
- coerce subordinates for their personal or financial benefit.
- attempt to influence outcome of an administrative hearing by privately contacting the hearing officer.



Terry knew that a proposal that was before the board would harm Terry's business competitor. Instead of publicly disclosing the matter and requesting recusal, Terry voted on the proposal.



Board member Mick has board staff employee Bob type an article for him that Mick hopes to sell to an Alaskan magazine. Bob types the article on State time.

Improper Gifts (AS 39.52.130)

A board member may not solicit or accept gifts if a person could reasonably infer from the circumstances that the gift is intended to influence the board member's action or judgment. "Gifts" include money, items of value, services, loans, travel, entertainment, hospitality, and employment. All gifts from registered lobbyists are presumed to be improper, unless the giver is immediate family of the person receiving the gift.

A gift worth more than \$150 to a board member or the board member's immediate family must be reported within 30 days if:

- the board member can take official action that can affect the giver, or
- the gift is given to the board member because he or she is on a state board.

The receipt of a gift worth less than \$150 may be prohibited if a person could reasonably infer from the circumstances that the gift is intended to influence the board member's action or judgment. Receipt of such a gift should be disclosed.

Any gift received from another government, regardless of value, must be reported; the board member will be advised as to the disposition of this gift.

A form for reporting gifts is available at www.law.alaska.gov/doclibrary/ethics or from the board or commission staff.

This restriction on gifts does not apply to lawful campaign contributions.



The commission is reviewing Roy's proposal for an expansion of his business. Roy invites all the board members out to dinner at an expensive restaurant. He says it will be okay, since he isn't excluding any of the members.



Jody receives a holiday gift every year from Sam. Jody was recently appointed to a state board, but Sam has no business that is before the board. Jody may accept the gift.

Improper Use or Disclosure of Information (AS 39.52.140)

No former or current member of a board may use or disclose any information acquired from participation on the board if that use or disclosure could result in a financial or personal benefit to the board member (or immediate family), unless that information has already been disseminated to the public. Board members are also prohibited from disclosing confidential information, unless authorized to do so.



Sheila has been on the board for several years. She feels she has learned a great deal of general information about how to have a successful business venture. So she sets up her own business and does well.



Delores has always advised and assisted the other doctors in her clinic on their continuing education requirements. After Delores is appointed to the medical board, she discloses this role to the board and continues to advise the doctors in her clinic.



Jim reviews a confidential investigation report in a licensing matter. He discusses the practitioner's violation with a colleague who is not a board member.

Improper Influence in State Grants, Contracts, Leases or Loans (AS 39.52.150)

A board member, or immediate family, may not apply for, or have an interest in a State grant, contract, lease, or loan, if the board awards or takes action to administer the State grant, contract, lease, or loan.

A board member (or immediate family) may apply for or be a party to a competitively solicited State grant, contract or lease, if the board as a body does not award or administer the grant, contract, or lease and so long as the board member does not take official action regarding the grant, contract, or lease.

A board member (or immediate family) may apply for and receive a State loan that is generally available to the public and has fixed eligibility standards, so long as the board member does not take (or withhold) official action affecting the loan's award or administration.

Board members must report to the board chair any personal or financial interest (or that of immediate family) in a State grant, contract, lease or loan that is awarded or administered by the agency the board member serves. A form for this purpose is available at www.law.alaska.gov/doclibrary/ethics or from the board or commission staff.



John sits on a board that awards state grants. John hasn't seen his daughter for nearly ten years so he figures that it doesn't matter when her grant application comes up before the board.



The board wants to contract out for an analysis of the board's decisions over the last ten years. Board member Kim would like the contract since she has been on the board for ten years and feels she could do a good job.

Improper Representation (AS 39.52.160)

A board or commission member may not represent, advise, or assist a person in matters pending before the board or commission for compensation. A nonsalaried board or commission member may represent, advise, or assist in matters in which the member has an interest that is regulated by the member's own board or commission, if the member acts in accordance with AS 39.52.220 by disclosing the involvement in writing and on the public record, and refraining from all participation and voting on the matter. This section does not allow a board member to engage in any conduct that would violate a different section of the Ethics Act.



Susan sits on the licensing board for her own profession. She will represent herself and her business partner in a licensing matter. She discloses this situation to the board and refrains from participation in the board's discussions and determinations regarding the matter.

Restriction on Employment After Leaving State Service (AS 39.52.180)

For two years after leaving a board, a former board member may not provide advice or work for compensation on any matter in which the former member personally and substantially participated while serving on the board. This prohibition applies to cases, proceedings, applications, contracts, legislative bills, regulations, and similar matters. This section does not prohibit a State agency from contracting directly with a former board member.

With the approval of the Attorney General, the board chair may waive the above prohibition if a determination is made that the public interest is not jeopardized.

Former members of the governing boards of public corporations and former members of boards and commissions that have regulation-adoption authority, except those covered by the centralized licensing provisions of AS 08.01, may not lobby for pay for one year.



The board has arranged for an extensive study of the effects of the Department's programs. Andy, a board member, did most of the liaison work with the contractor selected by the board, including some negotiations about the scope of the study. Andy quits the board and goes to work for the contractor, working on the study of the effects of the Department's programs.



Andy takes the job, but specifies that he will have to work on another project.

Aiding a Violation Prohibited (AS 39.52.190)

Aiding another public officer to violate the Ethics Act is prohibited.

Agency Policies (AS 39.52.920)

Subject to the Attorney General's review, a board may adopt additional written policies further limiting personal or financial interests of board members.

Disclosure Procedures

DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS OR COMMISSIONS (AS 39.52.220)

A board member whose interests or activities could result in a violation of the Ethics Act if the member participates in board action must disclose the matter on the public record and in writing to the board chair who determines whether a violation exists. A form for this purpose is available at www.law.alaska.gov/doclibrary/ethics or from the board or commission staff. If another board member objects to the chair's ruling or if the chair discloses a potential conflict, the board members at the meeting (excluding the involved member) vote on the matter. If the chair or the board determines a violation will occur, the member must refrain from deliberating, voting, or participating in the matter. For more information, see Ethics Act Procedures for Boards and Commissions available at the above noted web site.

When determining whether a board member's involvement in a matter may violate the Ethics Act, either the chair or the board or commission itself may request guidance from the Attorney General.

ATTORNEY GENERAL'S ADVICE (AS 39.52.240-250)

A board chair or a board itself may request a written advisory opinion from the Attorney General interpreting the Ethics Act. A former board member may also request a written advice from the Attorney General. These opinions are confidential. Versions of opinions without identifying information may be made available to the public.

REPORTS BY THIRD PARTIES (AS 39.52.230)

A third party may report a suspected violation of the Ethics Act by a board member in writing and under oath to the chair of a board or commission. The chair will give a copy to the board member and to the Attorney General and review the report to determine whether a violation may or does exist. If the chair determines a violation exists, the board member will be asked to refrain from deliberating, voting, or participating in the matter.

Complaints, Hearings, and Enforcement

COMPLAINTS (AS 39.52.310-330)

Any person may file a complaint with the Attorney General about the conduct of a current or former board member. Complaints must be written and signed under oath. The Attorney General may also initiate complaints based on information provided by a board. A copy of the complaint will be sent to the board member who is the subject of the complaint and to the Personnel Board.

All complaints are reviewed by the Attorney General. If the Attorney General determines that the complaint does not warrant investigation, the complainant and the board member will be notified of the dismissal. The Attorney General may refer a complaint to the board member's chair for resolution.

After investigation, the Attorney General may dismiss a complaint for lack of probable cause to believe a violation occurred or recommend corrective action. The complainant and board member will be promptly notified of this decision.

Alternatively, if probable cause exists, the Attorney General may initiate a formal proceeding by serving the board or commission member with an accusation alleging a violation of the Ethics Act. Complaints or accusations may also be resolved by settlement with the subject.

CONFIDENTIALITY (AS 39.52.340)

Complaints and investigations prior to formal proceedings are confidential. If the Attorney General finds evidence of probable criminal activity, the appropriate law enforcement agency shall be notified.

HEARINGS (AS 39.52.350-360)

An accusation by the Attorney General of an alleged violation may result in a hearing. An administrative law judge from the state's Office of Administrative Hearings serves as hearing officer and determines the time, place and other matters. The parties to the proceeding are the Attorney General, acting as prosecutor, and the accused public officer, who may be represented by an attorney. Within 30 days after the hearing, the hearing officer files a report with the Personnel Board and provides a copy to the parties.

PERSONNEL BOARD ACTION (AS 39.52.370)

The Personnel Board reviews the hearing officer's report and is responsible for determining whether a violation occurred and for imposing penalties. An appeal may be filed by the board member in the Superior Court.

PENALTIES (AS 39.52.410-460)

When the Personnel Board determines a board member has violated the Ethics Act, it will order the member to refrain from voting, deliberating, or participating in the matter. The Personnel Board may also order restitution and may recommend that the board member be removed from the board or commission. If a recommendation of removal is made, the appointing authority will immediately remove the member.

If the Personnel Board finds that a former board member violated the Ethics Act, it will issue a public statement about the case and will ask the Attorney General to pursue appropriate additional legal remedies.

State grants, contracts, and leases awarded in violation of the Ethics Act are voidable. Loans given in violation of the Ethics Act may be made immediately payable.

Fees, gifts, or compensation received in violation of the Ethics Act may be recovered by the Attorney General.

The Personnel Board may impose a fine of up to \$5,000 for each violation of the Ethics Act. In addition, a board member may be required to pay up to twice the financial benefit received in violation of the Ethics Act.

Criminal penalties are in addition to the civil penalties listed above.

DEFINITIONS (AS 39.52.960)

Please keep the following definitions in mind:

Benefit - anything that is to a person's advantage regardless financial interest or from which a person hopes to gain in any way.

Board or Commission - a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch, including the Alaska Railroad Corporation.

Designated Ethics Supervisor - the chair or acting chair of the board or commission for all board or commission members and for executive directors; for staff members, the executive director is the designated ethics supervisor.

Financial Interest - any property, ownership, management, professional, or private interest from which a board or commission member or the board or commission member's immediate family receives or expects to receive a financial benefit. Holding a position in a business, such as officer, director, partner, or employee, also creates a financial interest in a business.

Immediate Family - spouse; another person cohabiting with the person in a conjugal relationship that is not a legal marriage; a child, including a stepchild and an adoptive child; a parent, sibling, grandparent, aunt, or uncle of the person; and a parent or sibling of the person's spouse.

Official Action - advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer.

Personal Interest - the interest or involvement of a board or commission member (or immediate family) in any organization or political party from which a person or organization receives a benefit.

For further information and disclosure forms, visit our Executive Branch Ethics web site or please contact:

State Ethics Attorney
Alaska Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-5903
(907) 269-5100
attorney.general@alaska.gov

Revised 9/2013

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2. Petition to amend 12 AAC 75.930

March 8 2016 V.L. U.

~~February 12, 2013~~

TO: Kelly Vrem, Chairman Big Game Commercial Services Board
FROM: Virgil L. Umphenour

Petition to the Big Game Commercial Services Board

As provided for in AS 44.62.220, I herein petition the Big Game commercial Services Board (BGCSB) to amend 12 AAC 75.930 to reflect the Board's intent when the regulation was passed, and to insure that the Board's intent is published in the codified regulation.

On March 26, 2011, both my son Eric and I received letters from Lee R. Strout Jr. stating that he had received a complaint regarding our respective guiding operations (incl 1). In the letters, Mr Strout listed the names of all of our clients for the year 2010 and directed us to send him copies of our hunt records and contact information for all the listed clients. My response to Mr Strout's correspondence went out the same day (incl 2). Basically, I advised Mr Strout that when he adheres to the provisions of 12 AAC 75.930 and identifies the client who made the complaint, I would send him a copy of the contract "as appropriate AS 08.54.680c."

My attorney, Bill Satterberg, had communication with Kevin Saxby, the attorney for the Board, at the time. When I did not hear back from Mr. Strout, I assumed the issue had been resolved. It was not until November 30, 2012 that I again received correspondence from Mr. Strout. One year and 8 months later. (incl 3).

In his letter, Mr Strout cites AS 08.01.087(a), but fails to mention '(b)' of the same statute which requires him to obtain authorization from the Board before taking action. Mr Strout then goes on to state "my letter referenced a single complaint in its letter, that complaint is the basis for a broader investigation that the Division is conducting, which is clearly authorized by AS 08.01.087(a). The regulation also states that the request be made in writing and that it identify the name of the client whose contract is being requested. Given that a regulation must be consistent with the authorizing legislation, the only reasonable interpretation of 12 AAC 75.930 is that the Division may request multiple contracts, so long as it does so in writing and identifies the name of each client whose contract is being requested, which was done in this case. Simply put, the regulation cannot be interpreted to limit the number of client contracts the Division can request when AS 08.54.680(c) specifically allows the Division to request "contracts" from a registered guide outfitter." Mr. Strout neglects to say that AS 08.54.680(c) states that the guide will provide contracts "as appropriate". The only appropriate contracts would be the ones for the client or clients who filed complaints. In both the letters to my son Eric, and me, Mr Strout ignores the stipulation of AS 08.01.070(4) listed under "Administrative duties of boards" which clearly states "Each board shall perform the following duties in addition to those provided in its respective law: *request, through the department, investigations of violations of its laws and regulations;*" (emphasis added)

RECEIVED
Juneau

JAN 28 2015

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE BIG GAME COMMERCIAL SERVICES BOARD**

In the Matter of)
)
VIRGIL L. UMPHENOUR) OAH No. 14-0057-GUI
) Agency Nos. 2011-000326, 2011-
) 001203,; 2013-000045

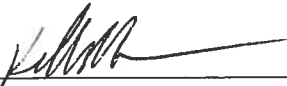
AMENDED REVISED DECISION FOLLOWING RECONSIDERATION

On October 15, 2014, the Board took action under AS 44.64.060(e)(3) to adopt the July 11, 2014, recommended decision in this matter and revise the discipline recommended in the decision. The Board accepted discipline items 1 and 3, imposing a fine of \$1,000, with \$500 suspended, and a reprimand. The Board rejected item 2, requiring Mr. Umphenour to produce the contracts.

On November 20, 2014, the Board received a petition under AS 44.62.540(a) from Mr. Umphenour, requesting reconsideration of the discipline imposed. The petition argued that “logically speaking, if the Board has decided that I do not have to deliver the contracts to the Division, then there should be no penalty against me for not doing so.” The petition also asserted that the discipline could destroy the respondent’s business by costing it his federal permits—a penalty that “would be unreasonably extreme.” The petition requested that “the Board remove the fine of \$1,000, with \$500 suspended, and remove the written reprimand.”

On December 1, 2014, the Board voted to grant the petition and reconsider the discipline. Upon reconsideration, the Board voted to remove the fine and the reprimand. The Board did not intend for this action to be a precedent with regard to discipline in future cases. Therefore, by the order of the chair implementing the vote of the Board, Sections I-IV of the decision dated July 11, 2014, including the discussion of the appropriate discipline, are ADOPTED. Section V is REJECTED.

DATED this 26 day of January, 2015.

By: 
Kelly Vrem
Chair, Big Game Commercial Services Board

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.


When Mr. Strout's letter of November 27, 2012 arrived, I was attending meetings in Anchorage (Alaska Professional Hunters Association and the Yukon River Panel to the Pacific Salmon Treaty). My wife signed for the letter and faxed it to me at the hotel. I had spoken with former BGCSB member Richard Rohrer about this issue when I received the March 2011 letter. I showed this recent letter to Mr Rohrer. Mr Rohrer had been on the Board when 12 AAC 75.930 was promulgated. Mr. Rohrer stated that the intent of the Board was that the Department would provide the guide with the name of the client who made the complaint and a copy of the complaint so that the guide could present his side of the issue.

I request that the Board make a finding of emergency because 12 AAC 75.930 was not written in the codified correctly to reflect the Board's intent, and it is being used illegally by the Department to violate the guarantees of the 14th Amendment to the US Constitution to due process, fair and equal treatment under the law, and right to confront one's accuser.

in accordance with AS 44.62.220 V.L.U.
I request that this issue be addressed ~~at the March meeting of the BGCSB to be held~~ in Fairbanks,

I also petition the BGCSB to direct the Department to follow the process outlined in AS 08.01.087(b) prior to initiating an investigation of persons regulated by the BGCSB.

I further petition the Board to direct the Department to cease usurping the Board's duties under AS 08.54.600 (a)(B), (6 and(c)(3) as well as AS 08.07.070(4)


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Master Guide 151

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