

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING

BIG GAME COMMERCIAL SERVICES BOARD

MINUTES OF MEETING
June 15, 2016

By the authority of AS 08.01.070(2) and AS 08.86.030, and in compliance with the provisions of AS 44.62, Article 6, a scheduled teleconference of the Big Game Commercial Services Board was held June 16, 2016.

The staff of the Division of Corporations, Business and Professional Licensing prepared these minutes. They were approved by a majority of the board in an email vote from June 28 to July 21, 2016.

AGENDA ITEM 1 CALL TO ORDER/ROLL CALL

The meeting was called to order by Kelly Vrem, Chair, at 9:04 a.m.

Board members present:

Kelly Vrem, Master Guide-Outfitter, Chair
Michele Metz, Large Private Landowner

David Jones, Transporter
Tom Atkins, Transporter
Henry D. Tiffany IV, Master Guide-Outfitter
Karen Polley, Public Member
Gene Peltola, Public Member

Board members absent:

David Brown, Board of Game Representative
Nicholas Jackson, Large Private Landowner

Board staff present:

Cindy Hansen, Licensing Examiner
Lee Strout, Investigator

Visitors present:

Dick Rohrer
Thor Stacey

AGENDA ITEM 2 REVIEW AGENDA

Ms. Polley motioned and Mr. Tiffany seconded and the agenda passed with unanimous consent.

AGENDA ITEM 3 INVESTIGATIVE REPORT

On a motion duly made by Mr. Jones, seconded by Mr. Tiffany and approved unanimously, it was

RESOLVED to enter into executive session in accordance with AS 44.62.310(c), and Alaska Constitutional Right to Privacy Provisions, for the purpose of discussing Subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion and Matters which by law, municipal charter, or ordinance are required to be confidential and for the purpose of discussing confidential disciplinary matters for the purpose of discussing investigations and reports.

Staff members Ms. Hansen and Investigator Strout remained during executive session.

The Board entered into executive session at 9:19am and exited out of executive session at 11:00am.

The meeting was called to order by Kelly Vrem, Chair, at 11:00am

Board members present:

Kelly Vrem, Master Guide-Outfitter, Chair
Michele Metz, Large Private Landowner

Nicholas Jackson, Large Private Landowner
David Jones, Transporter
Tom Atkins, Transporter
Henry D. Tiffany IV, Master Guide-Outfitter
Karen Polley, Public Member
Gene Peltola, Public Member

Board members absent:
David Brown, Board of Game Representative

Board staff present:

Janey Hovenden, Division Director
Sara Chambers, Division Operations Manager
Cindy Hansen, Licensing Examiner
Lee Strout, Investigator
Harriet Milks, AAG, Department of Law

Visitors present:

Dick Rohrer
Thor Stacey

AGENDA ITEM 4 Case No. 2016-000306

Mr. Tiffany moved to approve the consent agreement in Case No.2016-000306 and Ms. Metz seconded.

Mr. Jones moved to amend the consent agreement to increase the suspended portion of the fine to \$7,500 and the fine due reduced to \$2,500 and Ms. Metz seconded. Mr. Tiffany approved the amendment to his motion.

Discussion: Mr. Jones stated he wanted it noted that the amendment passed with the exception of one board member so it was not unanimous. Chairman Vrem stated this is more in line with what was adopted in a prior case and he is willing to accept the amended version.

Upon a motion duly made by Mr. Tiffany, seconded by Ms. Metz and approved by roll call vote, it was:

RESOLVED to accept the consent agreement for Case No. 2016-000306, Ralph C. Meloon, R#735.

Roll Call Vote:

	APPROVE	DENY	ABSTAIN	ABSENT
Kelly Vrem	X			
Karen Polley		X		
David Brown				X
Michele Metz	X			
Nicholas Jackson	X			
David Jones	X			
Tom Atkins	X			
Henry D. Tiffany IV	X			
Gene Peltola	X			

Upon a motion duly made by Mr. Jones, seconded by Ms. Metz and approved by roll call vote, it was:

RESOLVED to accept the amendment to the consent agreement to increase the suspended portion of the fine to \$7,500 and the fine due reduced to \$2,500 for Case No. 2016-000306, Ralph C. Meloon, R#735

Roll Call Vote:

	APPROVE	DENY	ABSTAIN	ABSENT
Kelly Vrem	X			
Karen Polley		X		
David Brown				X
Michele Metz	X			
Nicholas Jackson	X			
David Jones	X			
Tom Atkins	X			
Henry D. Tiffany IV	X			
Gene Peltola	X			

AGENDA ITEM 5 Case No. 2014-000089

Mr. Tiffany moved to approve the consent agreement in Case No.2014-000089 and Ms. Polley seconded.

Discussion: Mr. Tiffany stated he will vote to approve this because he believes it's an appropriate sanction and deserving.

Upon a motion duly made by Mr. Tiffany, seconded by Ms. Polley and approved by roll call vote, it was:

RESOLVED to accept the consent agreement for Case No. 2014-000089, Jonah M. Stewart, R#1271.

Roll Call Vote:

	APPROVE	DENY	ABSTAIN	ABSENT
Kelly Vrem	X			
Karen Polley	X			
David Brown				X
Michele Metz	X			
Nicholas Jackson	X			
David Jones	X			
Tom Atkins	X			
Henry D. Tiffany IV	X			
Gene Peltola	X			

AGENDA ITEM 6 Case No. 2014-000306

Mr. Tiffany moved to approve the consent agreement in Case No.2014-000306 and Ms. Metz seconded.

Discussion: Mr. Tiffany stated he will vote to support this because he believes in looking at the entire situation, this individual chose not to accept the first consent agreement that was offered and after more work and investigation was done, more was brought to light and a different consent agreement was offered, which the individual has accepted. It is more substantial but appropriate. Ms. Polley stated she agrees. Chairman Vrem stated he thinks the guide got off a little light but believes he learned a lesson. He will support it.

Upon a motion duly made by Mr. Tiffany, seconded by Ms. Metz and approved by roll call vote, it was:

RESOLVED to accept the consent agreement for Case No. 2014-000306, Christopher R. Branham, M#65.

Roll Call Vote:

	APPROVE	DENY	ABSTAIN	ABSENT
Kelly Vrem	X			
Karen Polley	X			
David Brown				X
Michele Metz	X			
Nicholas Jackson	X			
David Jones	X			
Tom Atkins	X			
Henry D. Tiffany IV	X			
Gene Peltola	X			

AGENDA ITEM 7 Legal Review on 12 AAC 75.340(d) Field Craft Standards

Chairman Vrem tabled 12 AAC 75.340(d) Field craft standards until the next available meeting.

AGENDA ITEM 8 Legal Review on Industry Outreach letter and FAW document

Ms. Milks, Assistant Attorney General from the Department of Law, provided a legal review on the Transportation subcommittee draft Industry Outreach letter and draft FAQ document. Ms. Milks stated the problem is trying to understand a statute that is not well written and the word "Transporter" is not defined. She suggests that defining this word would go a long way in clearing up what is currently a confusing area. The word "transport" is used to carry but also provide transporting services. Air Taxis provide incidental services.

Frequently Asked Big Game Transportation Questions:

The correct answer to Question 1: "Can I fly, for compensation, big game hunters, their equipment, or big game animals harvested by hunters to, from, or in the field?" is answer A: "Yes, AS 08.54.790(12) allows you to fly big game hunters as long as you do not:(i)charge more than the usual tariff or charter rate for the carriage of big game hunters, their equipment, or big game animals harvested by hunters; or (ii)advertise transportation services or big game hunting services to the public; in this sub subparagraph, "advertise" means soliciting big game hunters to be customers of an air taxi operator or air carrier for the purpose of providing air transportation to, from, or in the field through the use of print or electronic media, including advertising at trade shows, or the use of hunt broker services or other promotional services." Answer B is a question of federal law and she has not researched it; however, in general, unless expressly preempting state law, the state law is allowed to regulate the law pertaining to the state.

Mr. Jones stated the questions are grouped in reference to the headline. That question was asked by an air taxi that is not licensed as a transporter. Mr. Atkins stated he would like her department to decide if the feds can override this regulation. Chairman Vrem stated it has already been vetted by the Board of Game. Mr. Jones stated if we put this answer on the board website and a case develops from someone insistent about federal law, then it will go to court. He is happy with the states answer to the question. He agrees with Mr. Atkins about there being a

lot of discussion in subcommittee about federal law superseding state law; however, FAA has not provided them with a definitive answer. Ms. Milks stated she doesn't think she needs to get to that point because this board does not direct air tax providers what they can and cannot charge; they are stating that if they charge a premium then they are an air taxi provider.

Question #2: "Can I advertise air transportation for big game hunters if I do not charge more than the usual tariff or charter rate for the carriage of big game hunters, their equipment, or big game animals harvested by hunters?" The answer a is minimally correct: "No, If you advertise that you are a transporter of big game hunters, etc., you will be providing "transportation services" and for that, you need a license., AS 08.54.790650 and .720(12) prohibits you from advertising to big game hunters regardless of the tariff or charter rate."

Question #3: "Can I advertise air transportation for hunters if I do not refer to "big game" or any species that are defined as big game in Alaska?" Answer a : "Yes, Chapter 54, Big Game Guides and Related Occupations, (AS 08.54.591 – AS 08.54.790) has no jurisdiction over hunting or hunters other than in big game applications" is minimally correct, but (c) is the best answer: "No, the use of hunt or hunting as stand-alone words in advertising implies big-game." If specified "duck hunting" or "squirrel hunting" etc. then it is an unregulated activity and is allowed in un-licensed advertising. If they do what the question suggests and use some clever language to try and avoid the idea of big game in Alaska; the board will be looking for trouble because it's reasonably implied. They could achieve more clarity by proposing a regulation to amend the definitions, along the lines of (c). Without soliciting any advice from an air taxi means the person is not requesting transporter activity. There are only two things to exempt an air tax person from filling out the form-either don't advertise or don't charge a premium. If they do either of these, they are a transportation services provider.

Mr. Tiffany agrees with Mr. Atkins interpretation. If he were to ask Mr. Atkins to take him to XYZ Lake; Mr. Atkins is not acting as a transporter. If Mr. Atkins tells him where he can take him then he is acting as a guide, because he is directing a specific spot and therefore a transporter.

Ms. Milks stated she sensed a concern about the obligation of a person with an airplane for a job. Does he have to fill out the form and pay a fee? You could

change around the FAQ document and make it more focused on “Am I an air taxi or am I a transporter”?

Chairman Vrem asked what if the person is both an air taxi and transporter. Ms. Milks stated Question #3 is a judgement call. Answer a is minimally correct but c is the correct answer. It’s reasonably implied that you are taking these hunters for big game. Answer c is the best answer. Chapter 54 does not impose any obligations on anyone to hunt squirrels. That only applies providing transportation services for big game.

Question 4: “Can I advertise air transportation at The Great Alaska Sportsman’s Show if I don’t refer to hunting?” The answer is correct-nothing more needs to be said: “No, in AS 08.54.790(12) “advertise” means soliciting big game hunters to be customers of an air taxi operator or air carrier for the purpose of providing air transportation to, from, or in the field through the use of print or electronic media, including advertising at trade shows, or the use of hunt broker services or other promotional services.” The Great Alaska Sportsman’s Show clearly contains and promotes elements of the hunting “trade”. Advertising at a boat show, commercial fishing show or other show, without elements of the hunting trade, would be allowed.

Question 1: “Do I need to complete a transporter contract and a transporter activity report if I exercise my advertising privilege as a licensed transporter, but I do not charge more than the usual tariff or charter rate for the carriage of big game hunters?” The correct answer is a: “Yes, AS 08.54.790(12) allows no exemption from transporter contract or reporting requirements for licensed business or individuals who advertise transportation services or big game hunting services to the public, regardless of the tariff or charter rate.”

If they advertise then they switch themselves from an air taxi to a transporter. In order to escape the obligation to fill out the form and pay the fee, they better not be advertising or charging a premium. Ms. Milks stated it doesn’t matter if it’s at the Great Alaskan Sportsmen show. Mr. Jones disagreed; he stated they could advertise but not for big game. Ms. Milks suggested that there wouldn’t be a big point for air taxis to advertise at the show unless they were going to get hunters as clients. If they are doing a transporter activity then they have to fill out the report.

Mr. Atkins asked who is a transporter and who isn't? Ms. Milks stated the question is the word "transporter", the nature of the job and whether the job involves transportation services such as taking hunters and their stuff to and from the field, charging a premium and advertising. Ms. Polley stated the question she has is we have marine transporters too. Chairman Vrem stated they have no exemption. He suggested that perhaps the air taxi exemption should be removed. Ms. Milks stated the statute exemption cannot be removed without legislation. It's meant to protect the air taxis that are not transporters and can take walk-ins. Chairman Vrem asked if his air-taxi advertised service which included hunter but he only takes them to a certain place then he would not have to fill out a transporter form. Ms. Milks stated that it depends on if he had solicited big game hunters in his advertising. It would depend on the content.

**AGENDA ITEM 9 Review Transporter Subcommittee Proposals #1,
#2, #3**

Mr. Jones stated if a transporter and air taxi operator advertises; can they still selectively become an air taxi for point to point travel for someone who doesn't pay an extra fee. Ms. Milks stated a qualified no. If they meet the requirements of 79.12, and carry the "how" and the "who" and answer the "where" question, then they are a transporter unless they have not advertised and have not charged a premium. Ms. Milks stated that "advertise" is a defined term in 79.12(b) (ii). They could further expand that definition. Chairman Vrem stated that is what he hopes to do. He believes they can differentiate with a regulation project to clarify this to sanction an air taxi using their judgment selling their expertise. By not specifically including "hunters" in advertising then that would exempt them. Mr. Peltola stated if he wants to go on a Sat to his camp and they charge him the charter rate, is that a violation? Ms. Milks stated yes, for them but not for him and it would depend on whether the air taxi advertised or charged a premium rate. If they have advertised then they need to fill out the form.

Mr. Atkins asked about question #2. "Do I need to complete a transporter contract and a transporter activity report when I fly a hunter to a licensed guide camp or to another licensed transporter's lodge or boat?" Ms. Milks stated the answer is a: "Yes, AS 08.54.680(c), 12 AAC 75.400 and 12 AAC 75.450 combine to require a transporter contract and a transporter activity report whenever flying a hunter to, from, or in the field. There are currently no regulatory exceptions to contract or report requirements for multiple service providers on a single hunt."

If they are a licensed transporter then they have to fill out a form. Mr. Jones asked if a guide and a transporter need to fill out reports for the same hunter. Ms. Milks stated yes. If they want to change then they can. Air Taxi and transporter (services) needs to be defined. Chairman Vrem stated they need to look at Rolan Ruoss's proposals in subcommittee if they want to get any relief or abatement or alternative method to the current fee structure. He will play a more active role.

AGENDA ITEM 10 SB 254 and FY16 3rd Qtr Budget Report

Sara Chambers, the Division Operations Manager and Janey Hovenden, Division director, spoke about the requirements on SB254. The board was extended through June 30, 2019. This means there will be another audit in 2018 so the legislature has required the board submit a detailed plan to be solvent by 12/31/2019. The board will be required to deliver the report to the division by Oct 1 to be transmitted to the leg audit. Chairman Vrem stated he wants to form a subcommittee to work on the report and consider alternatives to the current fee schedule. The board will meet again to select one of the options to provide to the director. Mr. Tiffany asked if they could receive a more accurate budget. Chairman Vrem stated only \$200,000 is generated from the HR and TAR filing fees. He thinks two of the four options will get them out of debt in two years and the other two options will get them out of debt in four years. He will nominate a subcommittee that should start working as soon as possible. Mr. Tiffany stated he does not want to have a plan and then learn that the debt amount has changed. Ms. Chambers stated that is going to happen anyways as the HR and TAR filing fees come in. Director Hovenden stated the calculations are based on the \$50 per HR and TAR form as current in regulation. If

they are thinking of making changes to the fee structure then it will need to be sufficient, which is why the options show their impact to the deficit.

AGENDA ITEM 11 PUBLIC COMMENT

Dick Rohrer, Master Guide #69, stated he had never read the statute like Ms. Milks did today so they need to figure out how to work on the regulation and not statute since that would open it up for legislative involvement. It's unreasonable for the fee structure of transporters and shares the same concern of duplicate forms. From FY20014 to FY2016 our revenue shows only a slight increase and he believes it should be considerable higher. He will send an email with his questions to Ms. Hansen

Chairman Vrem stated the board needs to change fee structure and find a regulatory solution to the transporters dilemma.

Thor Stacey, Registered Guide #1194 and Alaska Professional Hunters Association board member, was tasked with supporting HB254 through the legislative process. The fee structure issue has been pretty successful, even with increases and overall the hunting guides have kind of resigned themselves to pay high fees to retire the deficit. He would encourage the board members from the transporter side to bring along the transporter industry, raise awareness to bring down the deficit and have the industry participate to keep the fees down. I think the guiding side has worked on the problems with the board and now he would encourage the transporter members to disseminate the information on the discussion today and a potential change to the fee structure. APHA was very clear in supporting HB254 and wants the deficit to be completed by FY2019. We expect this board to work with the division to retire the deficit by that date. He is available to answer any questions on HB254, the report and any APHA issues.

Chairman Vrem will convene another board meeting to adopt the field craft standards and a revised payment scheme. He will set up a sub-committee to deal with budget solutions. Mr. Stacey stated one of the problems in that the board meeting last summer was not well attended and the division moved fee increases forward with minimal fee notice.

Mr. Stacy stated that in the future notices should go out before August 1 so the sooner the subcommittee and board meet the sooner the public notices could go out. Chairman Vrem agreed and wants to meet before July 31st.

He appointed to the Revised Fee and Budget subcommittee: Kelly Vrem, Henry Tiffany, Dick Rohrer, Thor Stacy, Dave Jones, and Rolan Ruoss.

Ethics packets were provided and no board members had anything to report.

Chairman Vrem adjourned the meeting of the Alaska Big Game Commercial Services Board at 12:08pm.

Respectfully submitted:

Cindy Hansen, Licensing Examiner

Kelly Vrem, Chairperson
Big Game Commercial Services Board

Date _____

Approved Date: _____

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Respectfully submitted:



Cindy Hansen, Licensing Examiner



Kelly Vrem, Chairperson
Big Game Commercial Services Board

Date 7/21/16

Approved Date: 7/26/16