



**Alcoholic Beverage Control board
Meeting Minutes
October 3, 2019
Anchorage, Alaska**

● **ADMINISTRATION**

10:00 am

A. Call to Order

B. Roll Call

Board Members Present

Bob Klein, Chair, Industry Member

Rex Leath, Vice Chair, Public Safety Member

Board Members Present via Phone

Sara Erickson, Public Member

Charlie Cross, Rural Member

Glenn Brady, Industry Member

Staff Present

Erika McConnell, Director

Mikal Martin, Records and Licensing Supervisor

James Hoelscher, Enforcement Supervisor

Legal Counsel Present

Joan Wilson, Assistant Attorney General

Bob Klein proposes two agenda items, continuation of the discussion begun at the September 10, 2019, ABC Meeting and amendment and acceptance of the September 10, 2019, meeting minutes.

● **Discussion of Matters from Previous Meetings**

10:03 am

Bob Klein entertains a motion to go into executive session for attorney-client discussion with Joan Wilson to discuss the open meetings act subtleties that they need for this meeting.

Glenn Brady so moves.

Rex Leath seconds the motion.

Erika McConnell asks under which category of executive session this matter falls.

Bob Klein states it's an attorney-client discussion with the board's counsel.

Erika McConnell states that it would be appropriate to "suspend" the meeting to discuss with counsel but "executive session" doesn't appear to be appropriate.

Bob Klein asks Joan Wilson about the applicability of executive session.

Glenn Brady states that the motion is specifically to go into executive session for discussion not regarding personnel matters.

Joan Wilson states that one option is to suspend the meeting, the other is to go into executive session for attorney-client advice. She provides a reference a case, "Cool Holmes", which supports the ability of the board to do this as an executive session matter.

Glenn Brady, Libby Bakalar (private attorney for Erika McConnell), and Sara Erickson discuss that the board is difficult to hear at this time.

Bob Klein and Joan Wilson discuss the purpose of the executive session that they are going to enter and restate the motion.

None opposed, motion carries.

The board goes into executive session at 10:06am.

The board exits executive session at 10:27am.

Bob Klein states that there is no motion coming out of executive session because it was only a discussion with counsel.

Glenn Brady moves to enter executive session to discuss a non-personnel matter under 44.62.310(c)(4).

Bob Klein asks who is going to executive session in Glenn Brady's motion.

Glenn Brady clarifies that it will be the board's counsel and the board only.

Libby Bakalar (attorney for Erika McConnell) states that that section cited states that the board must clearly and specifically discuss the purpose of the executive session.

Glenn Brady begins to clarify.

Joan Wilson states that the board is not required to respond to outside counsel.

Rex Leath seconds the motion.

None opposed, motion carries

The board enters executive session with board counsel at 10:30am.

The meeting resumes at 10:40am.

Bob Klein states that the meeting is back on the record and the purpose of the meeting is to continue the discussion that was begun at the September 10 meeting of the Alcoholic Beverage Control board. He states the Director at that time requested that the discussion be held on the public record and asks if she still wishes the discussion to be public.

Erika McConnell confirms that she does.

James Hoelscher is also named in this matter and confirms that he also wishes any discussion regarding him be on the public record as well.

Bob Klein states that at the end of the September meeting the Director was going to report back to the board regarding their inquiries.

Erika McConnell reads her written response into the record about the ORI number inquiries that the board made; she clarifies that the ORI number search was initiated in response to a request from DPS, that no AMCO employee contacted the FBI about the ORI number, and that no staff member has attempted to get around the AMCO agreement with DPS regarding access to criminal justice information. She also addresses the comments by the board regarding her oversight of enforcement staff and the allegation that staff is unhelpful to applicants and the public.

After her report, Erika McConnell provides the board questions she would like them to answer. She asks Rex Leath when and how the information regarding AMCO's search for the ORI number came to his attention.

Rex Leath states that he doesn't remember the specific date that the information came to his attention but that he overheard a comment by staff in a hallway.

Erika McConnell asks if Rex Leath requested that Bob Klein add an executive session to the September 10th agenda before August 29th.

Bob Klein asks that Erika McConnell present all of her questions at once.

Erika McConnell states that she would like to ask each member if they requested an executive session be added to the September 10th agenda before August 29th, and if in the last two months they have been contacted by the Governor's office, Commerce Commissioner's office, or DPS regarding her employment. She states that she also has other specific questions for the chair.

Rex Leath asks Bob Klein if he can speak.

Joan Wilson states that she understands this is an unusual meeting but, as advice provided to the board in public, the meeting does not need to be an inquisition. If someone wanted an attorney-client discussion on pending or threatened litigation, that it would be an appropriate matter for an executive session. The board is holding the meeting and they are the ones that ask the questions. They may

respond to the Director's concern but they don't need to answer questions that may arise in a future court case. She recommends attorney client executive session to discuss potential pending litigation.

Bob Klein allows Rex Leath to speak as requested.

Rex Leath asks Erika McConnell if she is asking as an investigation or if her inquires go to the board's original question.

Erika McConnell states that she is asking because, until September 10, the board had not provided any feedback regarding her performance and now there are issues that she is trying to understand.

Libby Bakalar states that the public notice for the meeting states that it is to consider a personnel matter.

Bob Klein states that the chair has not recognized Libby Bakalar to allow her to speak. Regarding Rex Leath's comment and Joan Wilson's, he reminds everyone that under AS 04.06.070 the Director serves at the pleasure of the board, the Director's employment is not an administrative function.

Libby Bakalar states that this is a misrepresentation of what the statute says.

Joan Wilson states that this is a public meeting where the public is allowed to listen and that Libby Bakalar is present as a member of the public, but this is not a back and forth representation. She asks for Libby Bakalar not to comment further unless public comment is opened.

Libby Bakalar states for the record that the public notice states that this is a meeting to discuss personnel matters relating to the Director's performance and she is unsure why it must be done so secretly. She will reserve from further comment.

Rex Leath states that for clarification Erika McConnell uses the words "allegation" and "impropriety" where no allegations or inferences of impropriety were made. The board must be able to ask probing questions to be able to understand what is going on. The last few sentences of what she read into the record addressed the boards concerns regarding that matter. He wanted to clarify for the record that he asked questions, he did not make allegations.

Bob Klein states that he would like to shift the board's focus to another discussion.

Bob Klein moves under AS 04.06.070 that the Director be removed noting that the Director serves at the pleasure of the board and the reason for removal is that she has lost the board's confidence. This is contingent on the Marijuana Control Board also voting to remove the Director under the same reference no later than November 30, 2019.

Glenn Brady seconds the motion.

Bob Klein offers the Director the option to have the discussion in public or in executive session.

Erika McConnell states that she wishes to have the discussion in public.

Glenn Brady states that he appreciates the Director's feedback that was thorough and well considered but it does not have direct bearing on the discussion that the board is currently engaged in. He recognizes for the record the thorough nature of the Director's work and history and he appreciates what she has done.

Sara Erickson states that she is having difficulty hearing the other board members. The board discusses the motion at hand and they work to ensure that Sara Erickson has an understanding of what is occurring.

Charlie Cross has no comment.

Rex Leath ensures that Sara Erickson understands what is occurring and she provides her statement; her only comment is to say again what she said at the last meeting regarding the comments she has received from people regarding calling into the board and responses they have received. She additionally finds what the board sees at the meetings to be frustrating as a public member. She states that she doesn't back down from that, it is a constant concern that the public feels that the AMCO staff or the board doesn't do as much as they can to help, particularly when other state agencies bend over backward to be helpful.

Bob Klein thanks her for her comment.

Bob Klein recognizes that the Director works very hard at her job and that this motion is not to denigrate the effort she has put in. He states that there is a disconnect between the board's desires and how Erika McConnell approaches her position. The basis of the decision is not poor performance on the Director's part, it's a lack of confidence that the board's wishes are going to be carried through. He compliments her efforts, intelligence, the work that she has done, and the spirit of cooperation she has elicited from staff. However she is also an extension of the board and he doesn't feel confidence that the board's will is being enacted.

Glenn Brady echoes the comments regarding the Director's diligent and dedicated efforts, but his concern is also parallel to Bob Klein's with the addition that as a board and regulatory agency, the working relationships between the ABC board and other agencies has been compromised by differences in temperament which is a people matter. The fact is that on November 1 there is correspondence from DPS regarding criminal justice access and the follow up letter on June 25th severs ties and limits the effectiveness of the agency and the execution of the board's mission. This severing of ties was based on Erika McConnell's personality. He repeats that this is not a denigration of her work ethic or efforts which are impressive and appreciated.

Bob Klein asks for other discussion.

Libby Bakalar asks if the chair called for public discussion.

Bob Klein clarifies that he was asking about further discussion from the board, not opening the meeting for public comment.

Bob Klein calls a roll call vote.

None opposed, motion carries.

Bob Klein states that through this meeting's discussion, the question from September 10 has been answered and there is no public discussion opportunity appropriate to this meeting. This is not a denigration of Erika McConnell's work ethic, knowledge, or job performance. He recommends to the Governor's office and the administration that she is an employee that he asks them to keep and reassign, not terminate. The board's action is removing the Director from their service, not requesting that she be terminated from state employment. He states that meeting minutes are not going to be considered at this time. He asks if there are any other matters that a board member would like to bring forward.

Rex Leath states that James Hoelscher's name was mentioned in previous discussion but that he, and he believes the rest of the board, has no worry about wrongdoing on James Hoelscher's part. There was no wrongdoing or actions taken to circumvent any agreements, or respond inappropriately. The finding is that the matter, search for the ORI number, was not solicited by AMCO and he wanted to make it clear for the record since his name was mentioned. James Hoelscher was doing his job.

James Hoelscher states that he wanted to bring up that many of his provided documents and affidavit are in direct response to comments by the board regarding enforcement not being in check or enforcing Title 4. He wants to know if his response answers the board's questions, and if they still have these concerns regarding enforcement. It was clear that the concern was about enforcement and the Director's supervision of enforcement. The conversation pointed very clearly to him and he was mentioned by name. If information was brought up as a misunderstanding or alleged wrongdoing he would like an apology to enforcement and himself. He understands Rex Leath's comment but for his reputation the board needs to acknowledge that what was said was a mistake. If he had been asked about the matter sooner he could have provided the information in his supplemental documents and this matter could have been addressed without his name and enforcement's reputation being dragged through the mud.

Rex Leath states that he appreciates James Hoelscher's comments, and restates that there were no allegations made. The board attempted to contact James Hoelscher during the discussion at the last board meeting but he was unavailable. The board asked for the information to be requested out of public purview but the choice was made to hold the discussion on the record. Again he states that only questions were asked, no allegations were made. The board has no concerns when it comes to James Hoelscher's work performance.

Libby Bakalar asks to comment.

Bob Klein allows her to comment.

Libby Bakalar states that for the record this removal does not take into effect until there is a full vote of the Marijuana Board as well.

Joan Wilson states that the motion itself included contingency that the Marijuana Control Board also must remove the director no later than November 30, 2019.

Bob Klein ask for motion to adjourn.

Glenn Brady moves to adjourn.

Rex Leath seconds the motion.

None opposed, motion carries.

● **ADJOURN**

11:20 am