

Robert Nelson
Chairman of the Board
Alaska Municipal Bond Bank
Authority

November 30, 1994

661-94-0662

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Public Notice for Board
Meetings

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Former Chairman Eaton requested the advice of this office regarding the requirements under AS 44.85.040 for notice with respect to public meetings of the Municipal Bond Bank Authority (the "Authority"). We understand, from the information provided to this office, that the specific concern relates to the notice required for meetings of the board of directors of the Authority when some of the members participate by telephone. The board questions whether the location of a board member who participates by telephone must be included in the notice to the public and whether the public is entitled to access to that location.

We understand that Authority board members reside at various locations around the state and travel frequently. We also understand that all meetings of the Authority's board are conducted from the Authority's Anchorage office, that available board members in Anchorage attend in person at that location, and that the meetings are always open for public participation at that location. The board must frequently meet on short notice in connection with the authorization and sale of bonds and to conduct other business. In order to facilitate the conduct of these meetings, board members occasionally must participate by telephone. It is often impractical to provide advance public notice of each location from which a board member may participate by telephone and it is not always possible to provide the public access to each such location.

AS 44.85.040(b) provides:

The bond bank authority may meet and transact business by an electronic medium if (1) public notice of the time and locations where the meeting will be held by an electronic medium has been given in the same manner as if the meeting were held in a single location; (2) participants and members of the public in attendance can hear and have the same right to participate in the meeting as if the meeting were conducted in person; and

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(3) copies of pertinent reference materials, statutes, regulations, and audio-visual materials are reasonably available to participants and to the public. A meeting by an electronic medium as provided in this subsection has the same legal effect as a meeting in person.

Similarly, the Alaska Open Meetings Act provides for "[a]ttendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing." AS 44.62.310(a). With respect to the required notice the Open Meetings Act provides:

Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be used
. . . .

AS 44.62.310(e).

The policy behind the Alaska Open Meetings Act is expressly set forth in AS 44.62.312. The following provisions of this section are relevant to the question being addressed in this memo:

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

Thus, the Open Meetings Act is designed to promote public access and participation at meetings of governmental units. In addition, teleconferencing is to be used to promote the convenience of the public and the government and to facilitate the conduct of government business.

Requiring advance public notice of each location where

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a board member might participate by telephone and requiring that the public be allowed to participate from each such location does not promote the purposes of the Act. Further, such requirements would actually impede the Authority's ability to conduct business. Because it is not always possible to determine in advance where each board member will be on the date of a given board meeting, requiring advance public notice of and public access to such locations would effectively prohibit the participation by board members who could not otherwise participate at the meeting. For example, if a board member became ill and wished to participate in a meeting by telephone from the board member's home, the practice would be prohibited unless the location was publicly noticed in advance, the board member was willing to allow the public access to the board member's home for purposes of the meeting, and the board member's home had adequate teleconferencing facilities. We do not believe the legislature intended such a result.

In order to promote both the public access and convenience purposes of the Act, we believe that teleconference facilities, as that term used in AS 44.62.310(e), refers to those official teleconference facilities at which the public may participate. Thus, reasonable public notice is required to be given under the Act with respect to each location at which the public may attend the meeting. We do not believe that the notice requirement was intended to prohibit a member of a state governmental unit from participating at a public meeting by telephone merely because advance public notice of the location from which the member participates was not given or because access to the public is not available at that location.

Of course, all meetings of the Authority must be open to the public and public notice of those locations where the public may attend must be given. Whenever possible, advance notice of all locations where board members will participate should also be given and, if practicable, members of the public should be permitted to participate from those locations. When, on occasion, a particular member can not participate from a noticed location, that member should not be prohibited from fully participating by telephone from a location not available to the public, provided that all other requirements of the Open Meetings Act and AS 44.85.040(b) are met. On such occasions, the record should clearly indicate the locations from which each board member is participating. In addition, the record should also

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indicate those locations where public access has been provided and that appropriate public notice with respect to those locations has been given.

We believe the purposes behind the specific requirements of AS 44.85.040(b) to be no different from the purposes under the Open Meetings Act. Accordingly, we believe the notice requirements for board member participation by telephone under that statute to be the same as those under the Open Meetings Act described above.

Should you have any questions with respect to this matter, please let me know.

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