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THE AMAZING SPIDER-MAN
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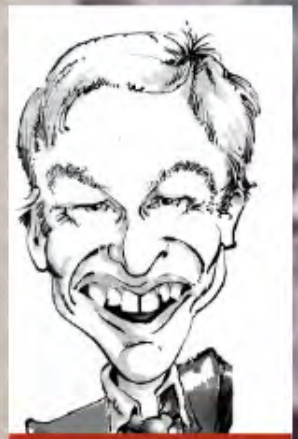
Board Member Ethics: An Overview of Board Member Rights, Responsibilities, and the Open Meetings Act

AASB Boot Camp

Thursday, November 2nd, 2017



John M. Sedor

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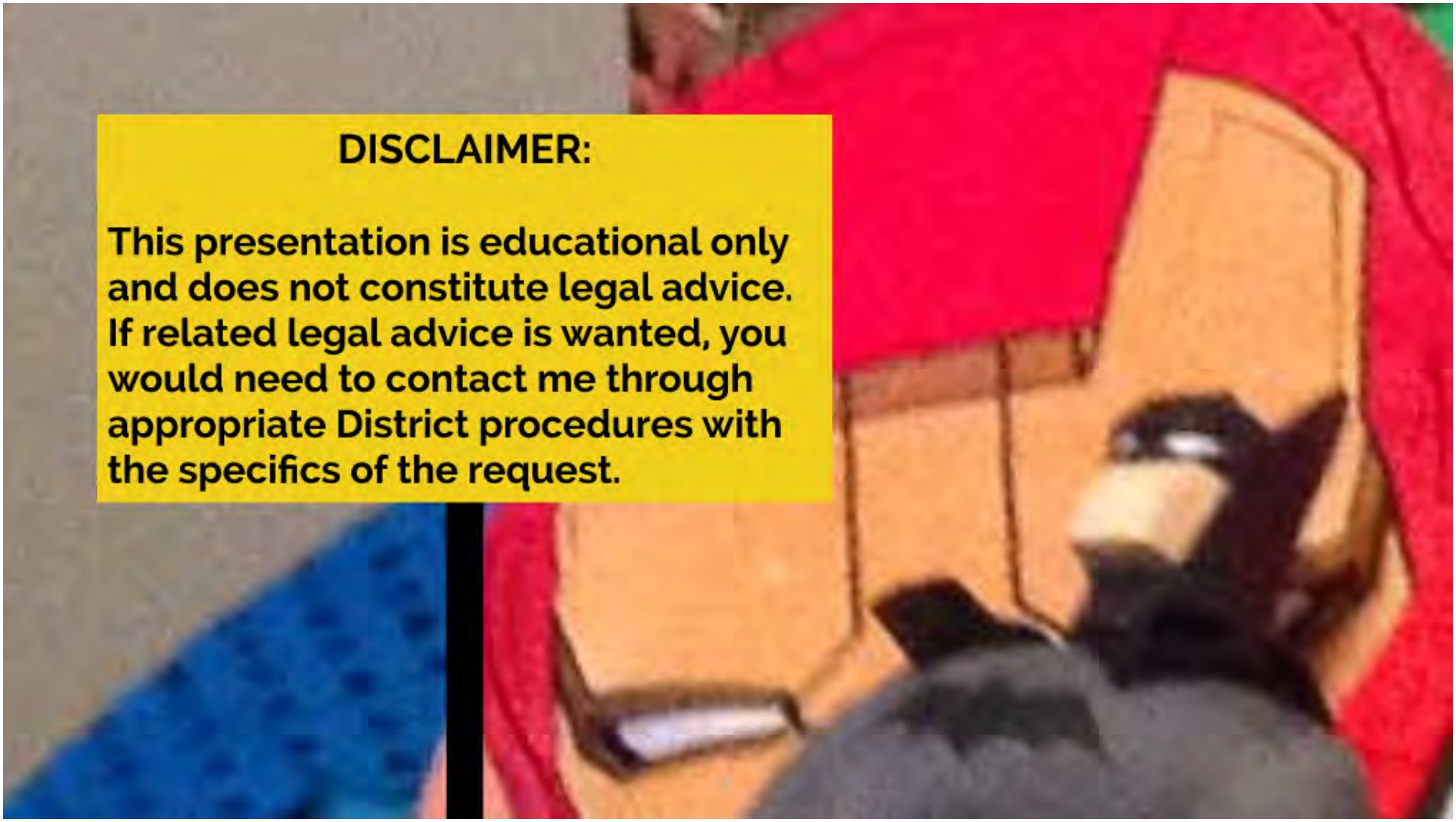
DISCLAIMER:
This presentation is educational only and does not constitute legal advice. If related legal advice is wanted, you would need to contact me through appropriate District procedures with the specifics of the request.

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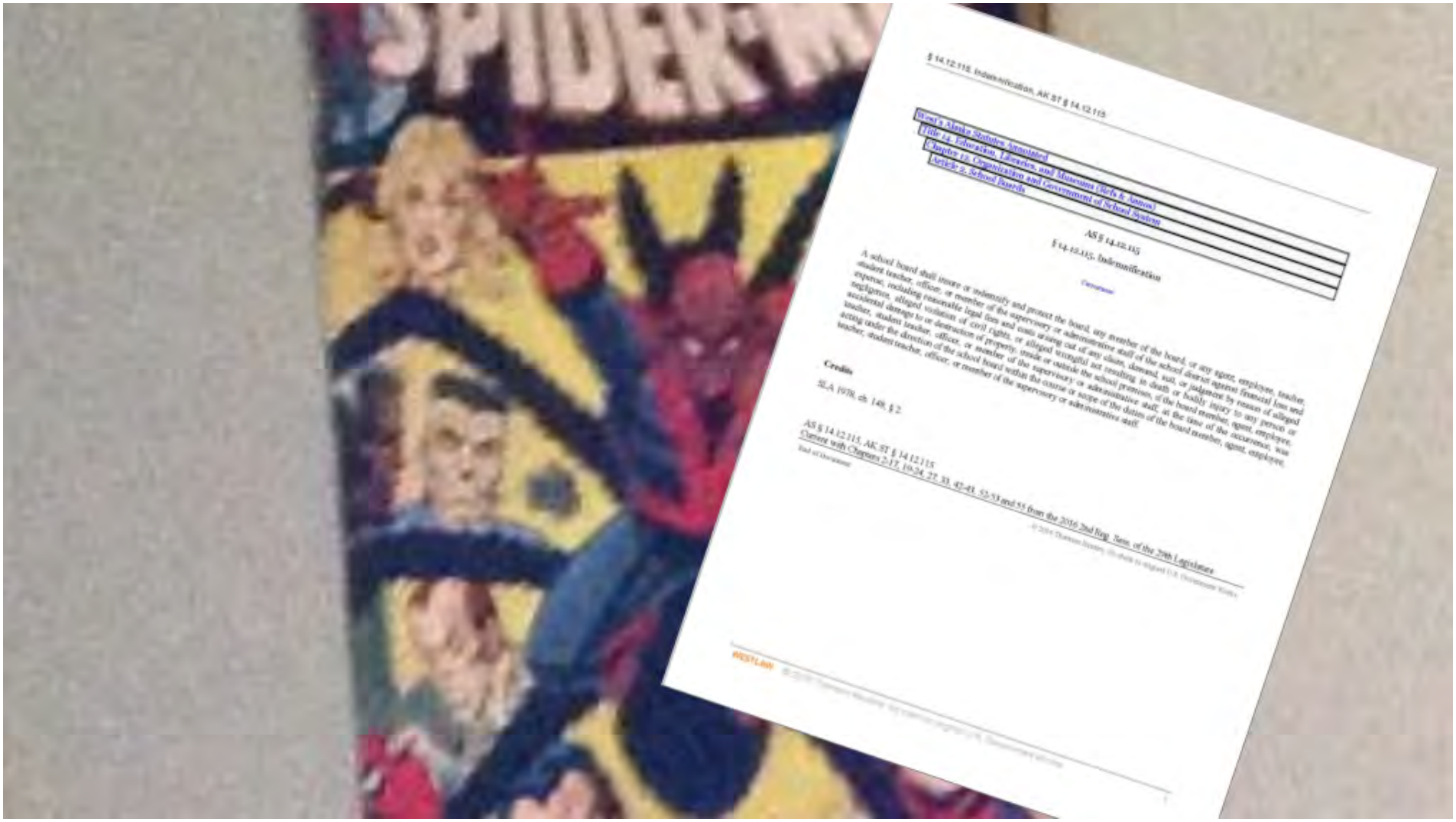
Let's pretend things are a bit challenging in Juneau (and I'm not just talking about the weather). Although you are not the Board President, you get invited to go on local radio or TV for an unscripted interview. You are lured into a verbal attack on certain legislators and those who oppose investment in public schools. Unfortunately, a well-connected Senator, and friend of Warren Buffett, hears your interview and decides to sue you. No worries: the District will insure and indemnify you for legal costs and any potential settlement or judgment.


§ 14.12.115. Indemnification, AK ST § 14.12.115
West's Alaska Statutes Annotated
Title 14. Education, Libraries, and Museums (Arts & Junior)
Chapter 14. Organization and Government of School Districts
Article 2. School Boards
AS § 14.12.115
§ 14.12.115. Indemnification
A school board shall insure or indemnify and protect the board, any member of the board, or any agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit, or judgment by reason of alleged negligence, alleged violation of civil rights, or alleged wrongful act resulting in death or bodily injury to any person or accidental damage to or destruction of property, inside or outside the school premises, of the board member, agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff, at the time of the occurrence, was acting under the direction of the school board within the course or scope of the duties of the board member, agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff.
Credits
SLA 1978, ch. 148, § 2.
AS § 14.12.115, AK ST § 14.12.115
Current with Chapters 2-17, 19-24, 27, 33, 42-43, 53-53 and 55 from the 2016 2nd Reg. Sess. of the 29th Legislature
WESTLAW

AS § 14.12.115

§ 14.12.115. Indemnification

Currentness

A school board shall insure or indemnify and protect the board, any member of the board, or any agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit, or judgment by reason of alleged negligence, alleged violation of civil rights, or alleged wrongful act resulting in death or bodily injury to any person or accidental damage to or destruction of property, inside or outside the school premises, if the board member, agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff, at the time of the occurrence, was acting under the direction of the school board within the course or scope of the duties of the board member, agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff.

Credits

SLA 1978, ch. 148, § 2

West's Alaska Statutes Annotated
Title 14. Education, Libraries, and Museums (Refs & Annos)
Chapter 12. Organization and Government of School System
Article 2. School Boards

AS § 14.12.115

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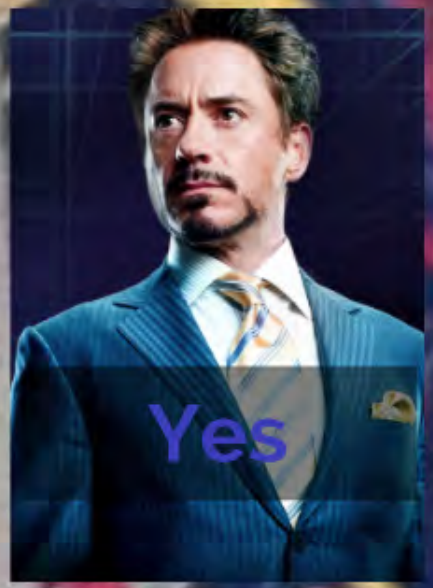
Credits

SLA 1978, ch. 148, § 2

Can a Board Member's power to participate in Board meetings and vote be taken away? (Or can your powers as a Board Member be taken away?)



Your preferred candidate for an exempt administrative job with the District has a better chance of being hired since you were elected to the Board.

West's Alaska Statutes Annotated
Title 14. Education, Libraries, and Museums (Refs & Annos)
Chapter 14. Local Administration of Schools
Article 1. Operation of Districts

AS § 14.14.130

§ 14.14.130. Chief school administrator

Currentness

(a) A school board may select and employ a qualified person as the chief school administrator for the district. In this subsection, "employ" includes employment by contract.

(b) If the district employs a chief school administrator, the administrator shall administer the district in accordance with the policies that the school board prescribes by bylaw.

(c) If the district employs a chief school administrator, the administrator shall select, appoint, and otherwise control all school district employees that serve under the chief school administrator subject to the approval of the school board.

(d) This section does not prohibit two or more school districts from sharing the services of a chief school administrator.

Credits

SLA 1966, ch. 98, § 1; SLA 1969, ch. 29, § 1; SLA 1990, ch. 136, §§ 3, 4; SLA 1998, ch. 83, §§ 19, 20, 21.

Notes of Decisions (2)

AS § 14.14.130, AK ST § 14.14.130
Current with Chapters 2-17, 19-24, 27, 33, 42-43, 52-53 and 55 from the 2016 2nd Reg. Sess. of the 29th Legislature

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Credits

What is Micromanaging?

You are focused on going above and beyond the call of duty as a Board Member. You read the entire Board packet for the next regular meeting and realize that you need to "drill down" in order to be prepared at some point to make tough budget decisions. You contact the HR department and request a current scattergram of teacher placement on the salary schedule. You also contact Finance to get actual savings associated with non-renewal or lay-off of non-tenured staff.

Because this information is important, you are entitled to it.

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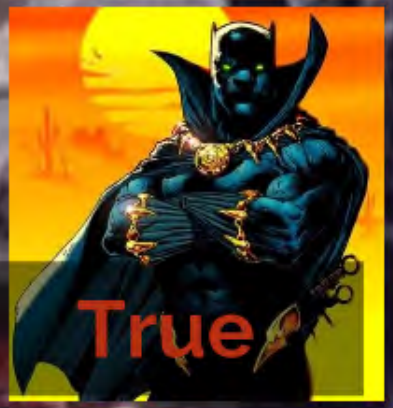
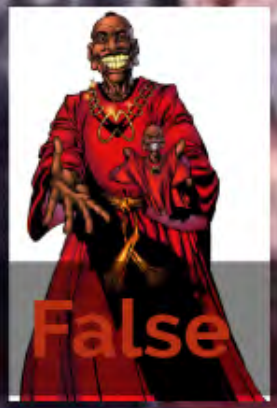
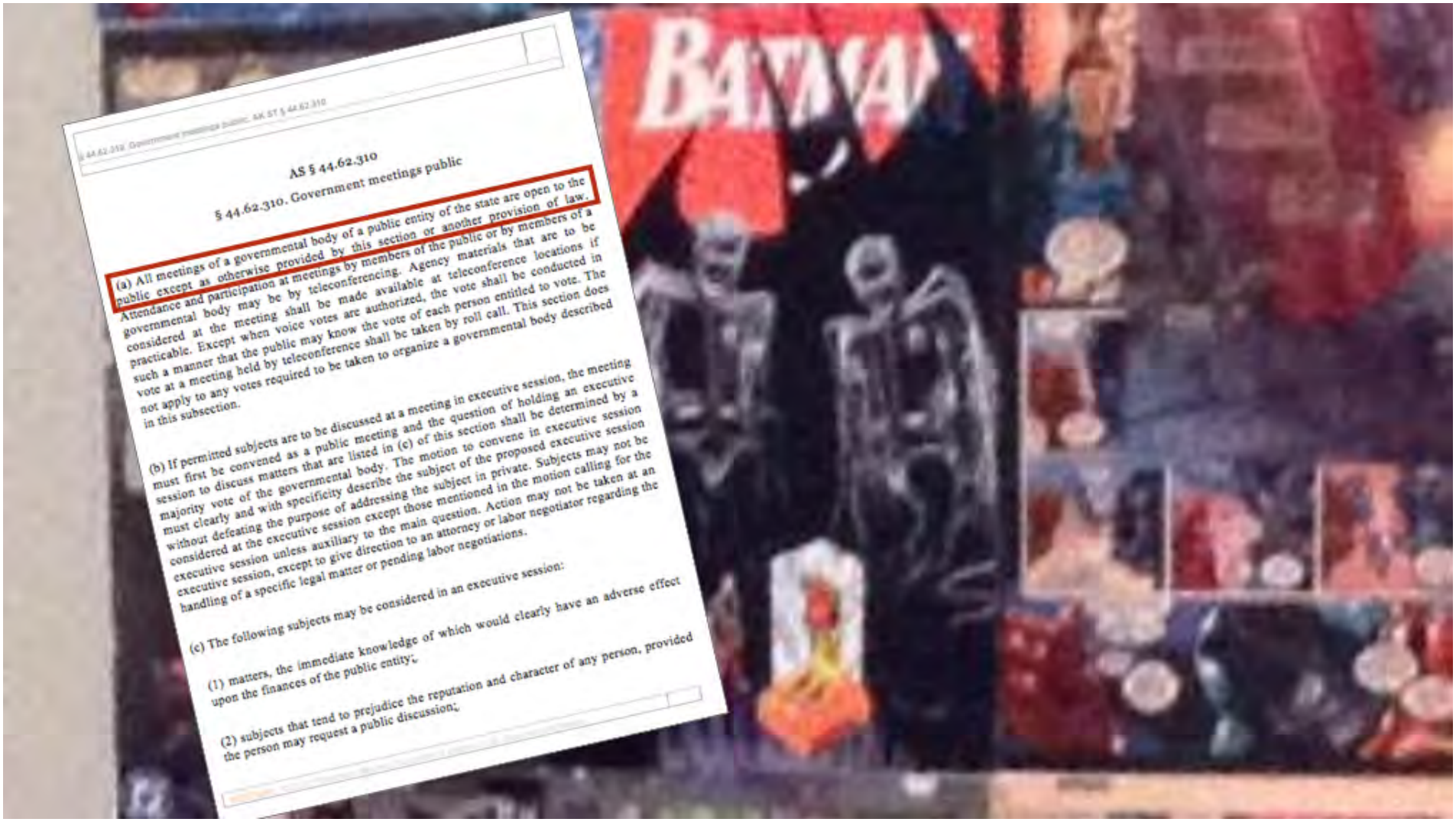
Open Meetings Act

Your School Board has chosen you and a Board Member colleague to be on the negotiations committee. The two of you will meet with the Superintendent and HR folks next Friday night to formulate a negotiation strategy. You are subject to the Open Meetings Act Posting Requirement.







AS § 44.62.310

§ 44.62.310. Government meetings public

(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

(c) The following subjects may be considered in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

AS § 44.62.310

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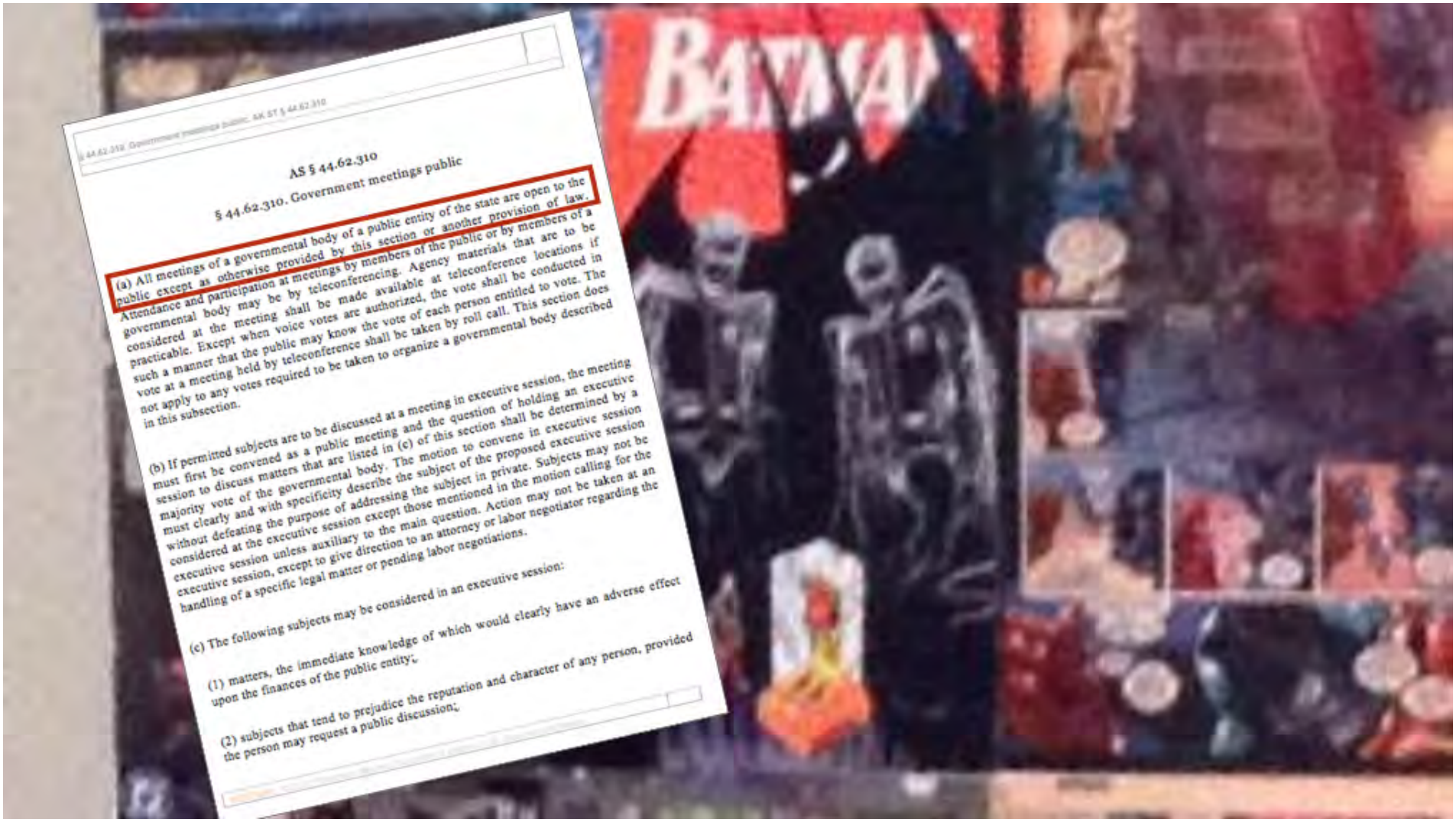

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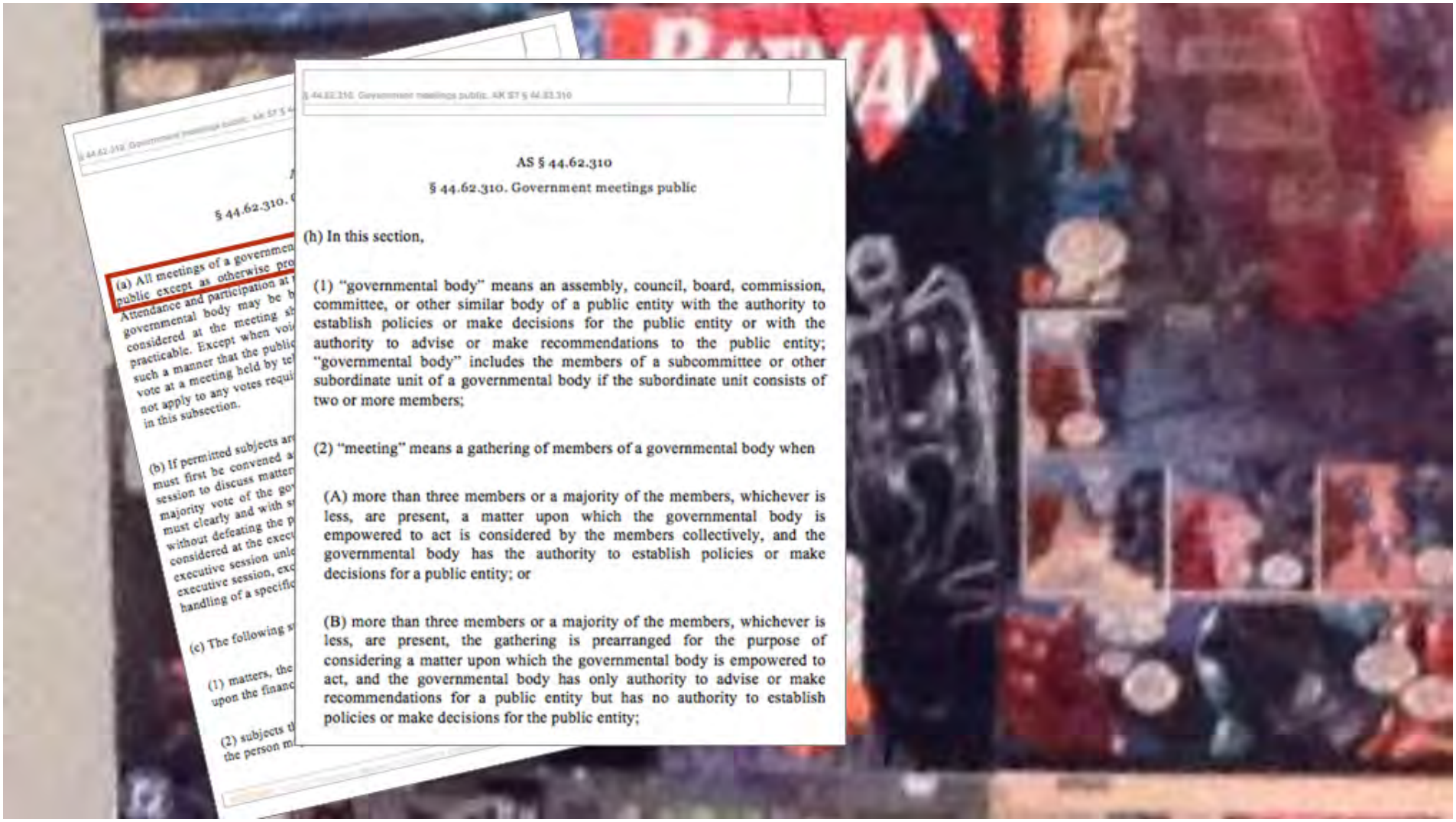

AS § 44.62.310

§ 44.62.310. Government meetings public

(h) In this section,

(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

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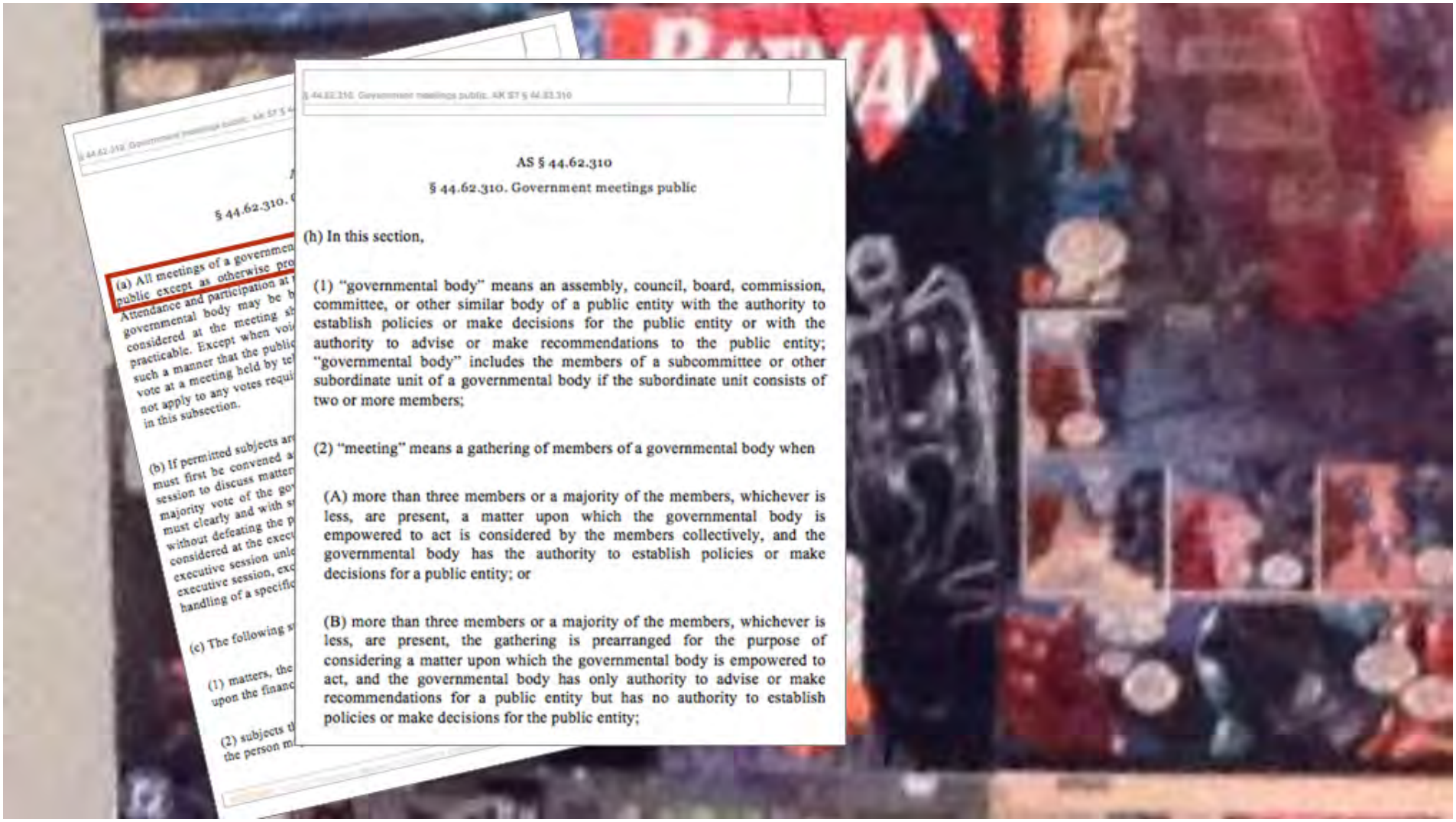

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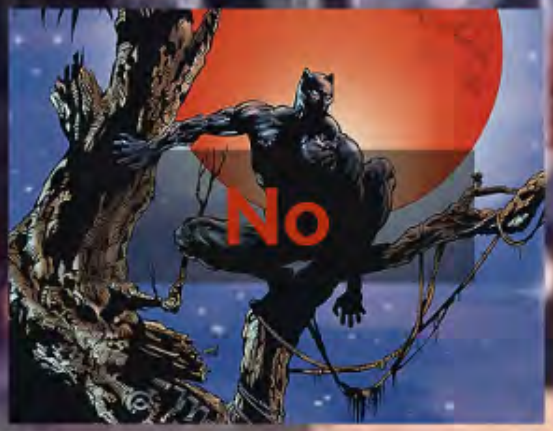
There is a regularly-scheduled School Board meeting next week. One of the items on the agenda is a proposed expenditure of $500,000 to repair the playground equipment at an elementary school.

You are at home trying to figure out how the price of swing sets got to be so high. A neighbor with elementary-aged kids stops by and begins to discuss the need for the playground repairs with you. Shortly thereafter, a parent of high-school-aged children stops by and argues against the playground expenditure in these difficult fiscal times. Before you know it, five or six of your neighbors have joined in this friendly afternoon debate. Then a fellow Board Member arrives unexpectedly and joins in the discussion. During the debate, you decide to vote for the expenditure. Have you violated the Open Meetings Act?



§ 44.62.310. Government meetings public. AK ST § 44.62.310

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(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government.

Credits

SLA 1959, art VI, ch. 1, ch. 143, § 1; SLA 1966, ch. 48, § 1; SLA 1968, ch. 78, § 1; SLA 1969, ch. 7, § 1; SLA 1972, ch. 98, §§ 1, 2; SLA 1972, ch. 100, § 2; SLA 1976, ch. 180, § 1; SLA 1983, ch. 54, §§ 2, 3; SLA 1986, ch. 201, § 2; SLA 1991, ch. 74, § 7; SLA 1994, ch. 69, §§ 2–6; SLA 2004, ch. 54, § 7. Amended by: SLA 2009, ch. 25, §§ 1, 2, eff. Aug. 23, 2009.

Notes of Decisions (86)

AS § 44.62.310, AK ST § 44.62.310
Current with Chapters 2-17, 19-24, 27, 33, 42-45, 52-53 and 55 from the 2016 2nd Reg. Sess. of the 29th Legislature

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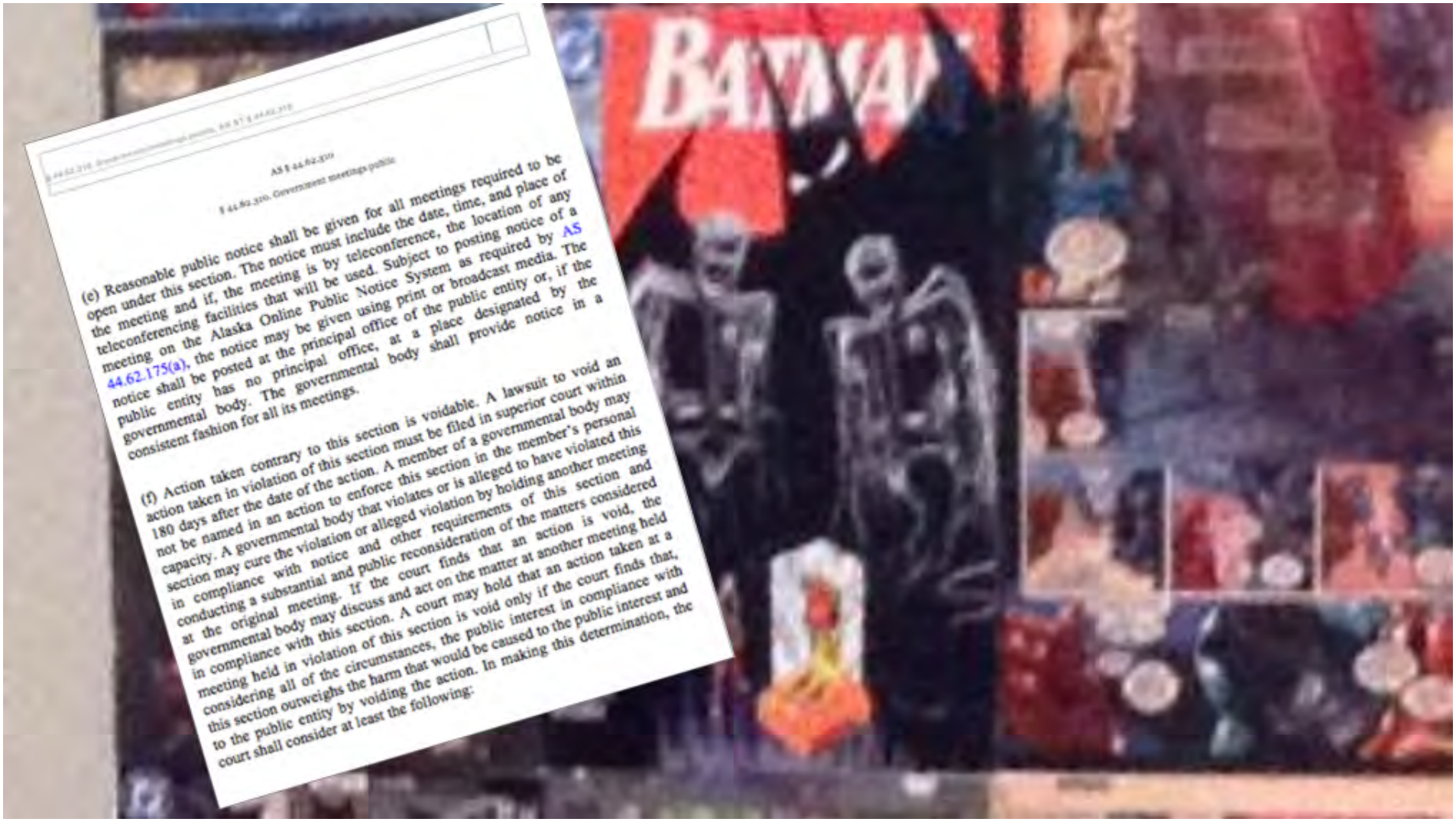
The OMA provides for which of the following types of meetings?

A. Regular meeting
B. Executive session meeting
C. Special meeting
D. Work session meeting
E. All of the above
F. None of the above



AS § 44.62.310

§ 44.62.310. Government meetings public

(e) 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. Subject to posting notice of a meeting on the Alaska Online Public Notice System as required by AS 44.62.175(a), the notice may be given using print or broadcast media. The notice shall be posted at the principal office of the public entity or, if the public entity has no principal office, at a place designated by the governmental body. The governmental body shall provide notice in a consistent fashion for all its meetings.

(f) Action taken contrary to this section is voidable. A lawsuit to void an action taken in violation of this section must be filed in superior court within 180 days after the date of the action. A member of a governmental body may not be named in an action to enforce this section in the member's personal capacity. A governmental body that violates or is alleged to have violated this section may cure the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. If the court finds that an action is void, the governmental body may discuss and act on the matter at another meeting held in compliance with this section. A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section outweighs the harm that would be caused to the public interest and to the public entity by voiding the action. In making this determination, the court shall consider at least the following:

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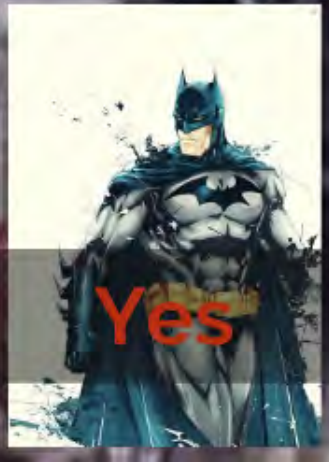
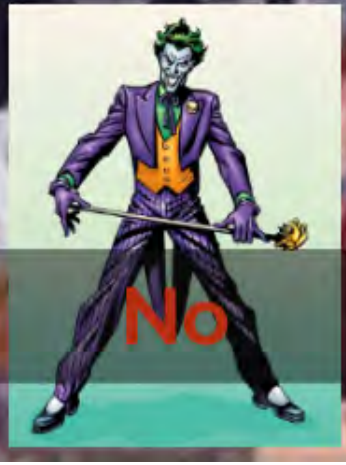
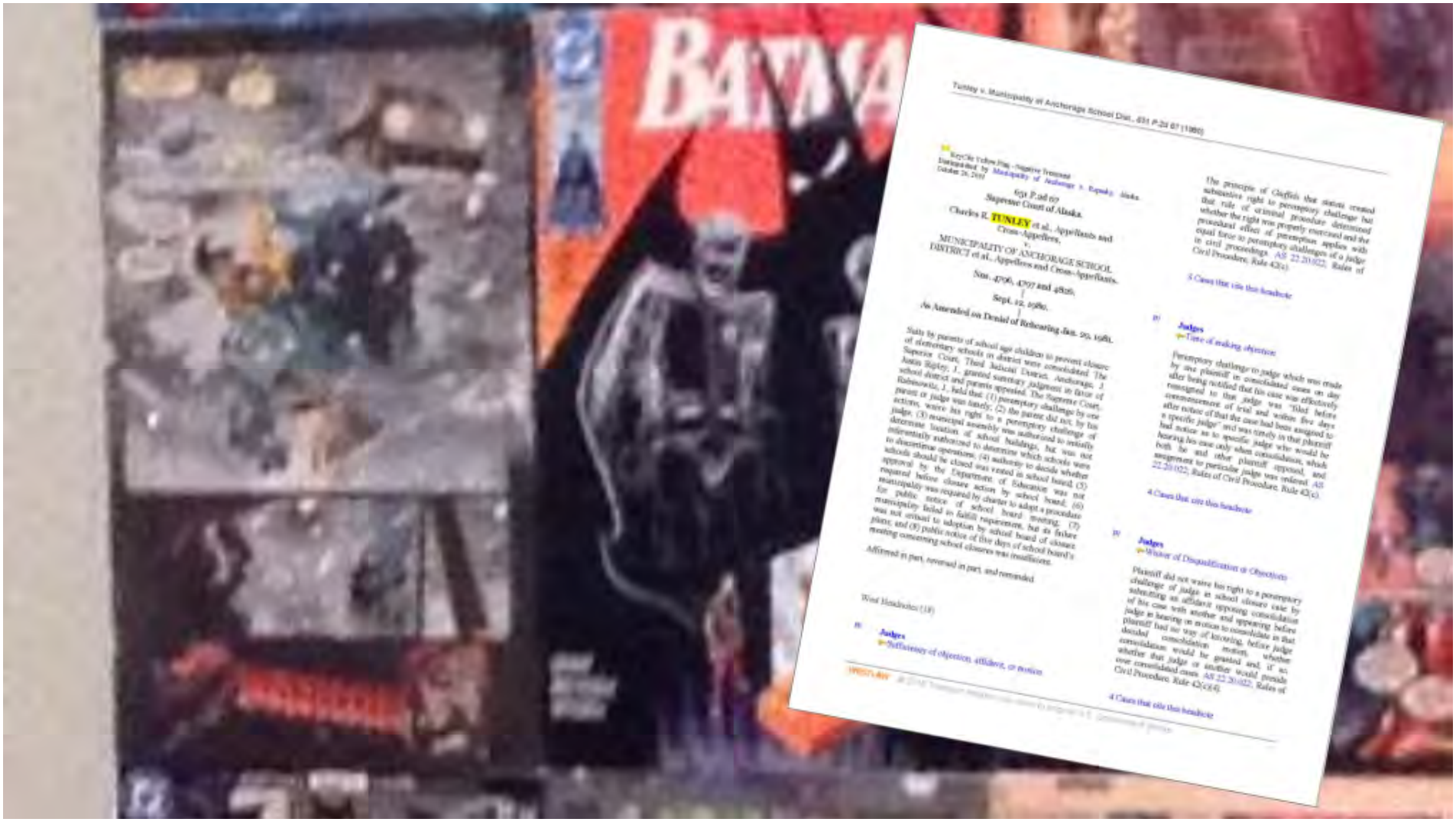
Your school district does not have as much money as it would like.
In fact, it has been common knowledge for quite some time that the District is going to have to make substantial cuts in its budget for the 2017-2018 school year.
Because of the size of the cuts that are needed and the fact that several of the District's elementary schools are not at capacity, the administration has recommended the closure of one of the elementary schools.
Because of the importance of this issue, the Board President decides to call a special meeting devoted solely to whether or not the Board should close the school. Board policy requires 24 hour notice of special meetings. The Administration timely posts notice of the special meeting 4 days prior to the meeting.
The meeting occurs and the Board eventually agrees with the administration and votes to close the school. Has there been a violation of the open meetings act?







Tunley v. Municipality of Anchorage School Dist., 631 P.2d 87 (1980)

KeyCite Yellow Flag - Negative Treatment
Distinguished by Municipality of Anchorage v. Espeuka, Alaska, October 26, 2010

631 P.2d 87
Supreme Court of Alaska.

Charles R. TUNLEY et al., Appellants and Cross-Appellees,
v.
MUNICIPALITY OF ANCHORAGE SCHOOL DISTRICT et al., Appellees and Cross-Appellants.

Nos. 4706, 4707 and 4826.
Sept. 12, 1980.
As Amended on Denial of Rehearing Jan. 29, 1981.

Suits by parents of school age children to prevent closure of elementary schools in district were consolidated. The Superior Court, Third Judicial District, Anchorage, J. Justin Ripley, J., granted summary judgment in favor of school district and parents appealed. The Supreme Court, Rabinowitz, J., held that: (1) peremptory challenge by one parent or judge was timely; (2) the parent did not, by his actions, waive his right to a peremptory challenge of judge; (3) municipal assembly was authorized to initially determine location of school buildings, but was not inferentially authorized to determine which schools were to discontinue operations; (4) authority to decide whether schools should be closed was vested in school board; (5) approval by the Department of Education was not required before closure action by school board; (6) municipality was required by charter to adopt a procedure for public notice of school board meeting; (7) municipality failed to fulfill requirements, but its failure was not critical to adoption by school board of closure plans; and (8) public notice of five days of school board's meeting concerning school closures was insufficient.

Affirmed in part, reversed in part, and remanded.

West Headnotes (18)

1. Judges
Sufficiency of objection, affidavit, or motion

The principle of Chefkis that statute created substantive right to peremptory challenge but that rule of criminal procedure determined whether the right was properly exercised and the procedural effect of peremptory applies with equal force to peremptory challenges of a judge in civil proceedings. AS 22.20.022; Rules of Civil Procedure, Rule 42(c).

5 Cases that cite this headnote

2. Judges
Time of making objection

Peremptory challenge to judge which was made by one plaintiff in consolidated cases on day after being notified that his case was effectively reassigned to that judge was "filed before commencement of trial and within five days after notice of that the case had been assigned to a specific judge" and was timely in that plaintiff had notice as to specific judge who would be hearing his case only when consolidation, which both he and other plaintiff opposed, and assignment to particular judge was ordered. AS 22.20.022; Rules of Civil Procedure, Rule 42(c).

4 Cases that cite this headnote

3. Judges
Waiver of Disqualification or Objections

Plaintiff did not waive his right to a peremptory challenge of judge in school closure case by submitting an affidavit opposing consolidation of his case with another and appearing before judge in hearing on motion to consolidate in that plaintiff had no way of knowing, before judge decided consolidation motion, whether consolidation would be granted and, if so, whether that judge or another would preside over consolidated cases. AS 22.20.022; Rules of Civil Procedure, Rule 42(c)(4).

4 Cases that cite this headnote

KeyCite Yellow Flag - Negative Treatment
Distinguished by Municipality of Anchorage v. Repasky, Alaska, October 26, 2001

631 P.2d 67
Supreme Court of Alaska.

Charles R. TUNLEY et al., Appellants and Cross-Appellees,
v.
MUNICIPALITY OF ANCHORAGE SCHOOL DISTRICT et al., Appellees and Cross-Appellants.

Nos. 4796, 4797 and 4826.
|
Sept. 12, 1980.
|
As Amended on Denial of Rehearing Jan. 29, 1981.

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[2]

The purpose of the OMA is to allow for
(1) public observation of decision making and
(2) public participation in public meetings and decision making.

AS § 29.20.020

§ 29.20.020. Meetings public

(a) Meetings of all municipal bodies shall be public as provided in AS 44.62.310. The governing body shall provide reasonable opportunity for the public to be heard at regular and special meetings.

(b) This section applies to home rule and general law municipalities.

Credits
SLA 1985, ch. 74, § 7.

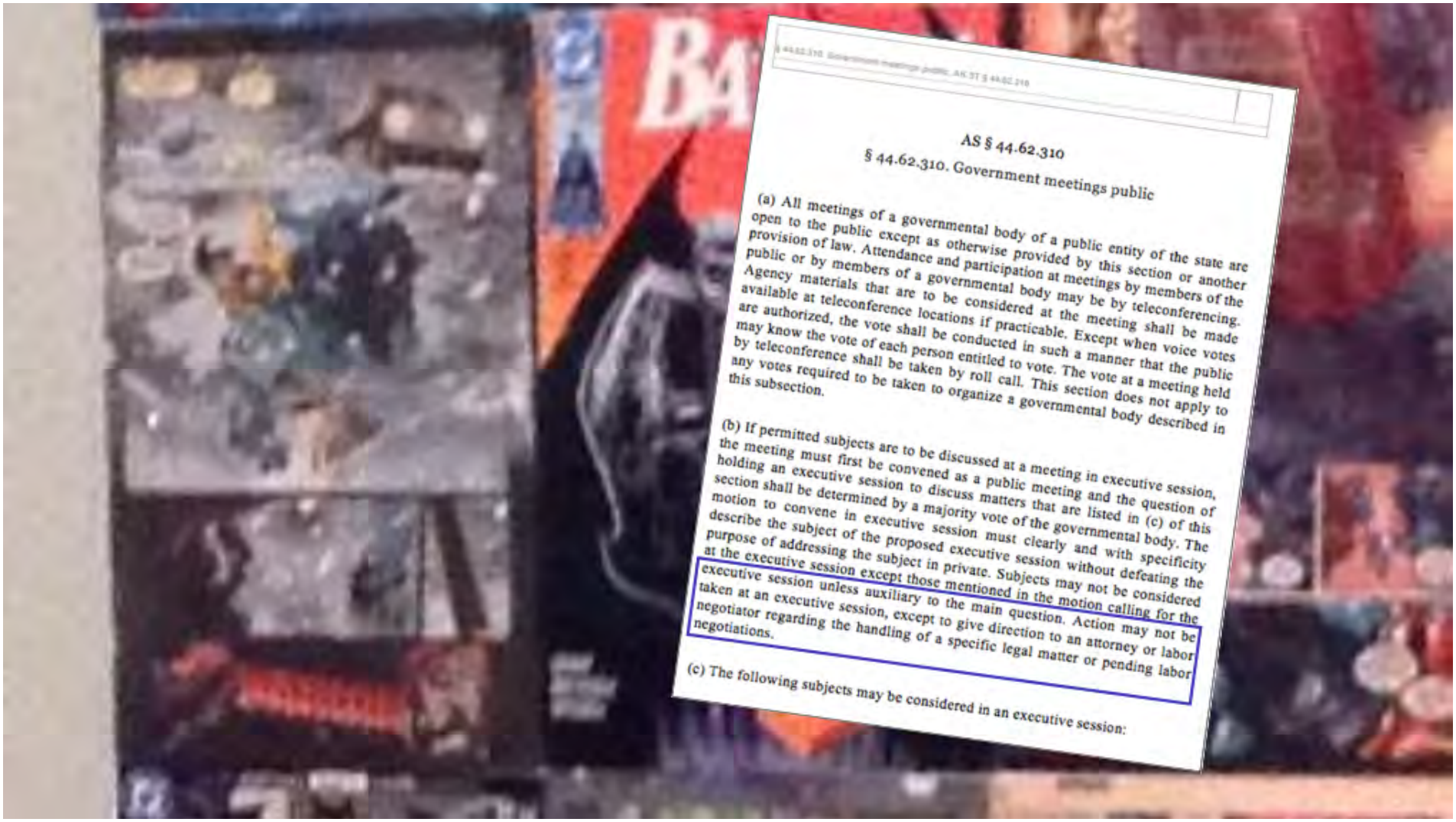
AS § 29.20.020, AK ST § 29.20.020
Current through the 2016 Second Regular Session through Fifth Special Session of the 29th Legislature

End of Document

During a Board meeting, an executive session is held in which the Board votes on what direction the negotiations should take. A violation of the OMA has occurred.

True

False



AS § 44.62.310

§ 44.62.310. Government meetings public

(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

(c) The following subjects may be considered in an executive session:

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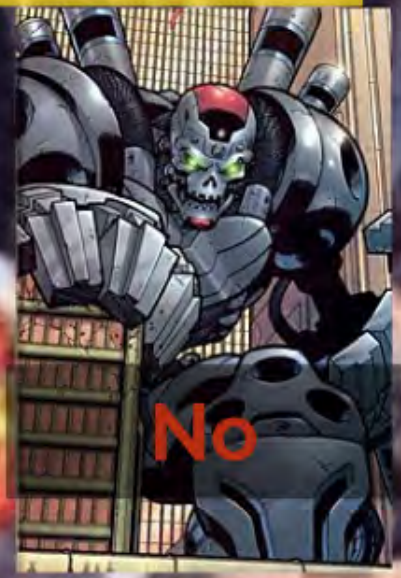
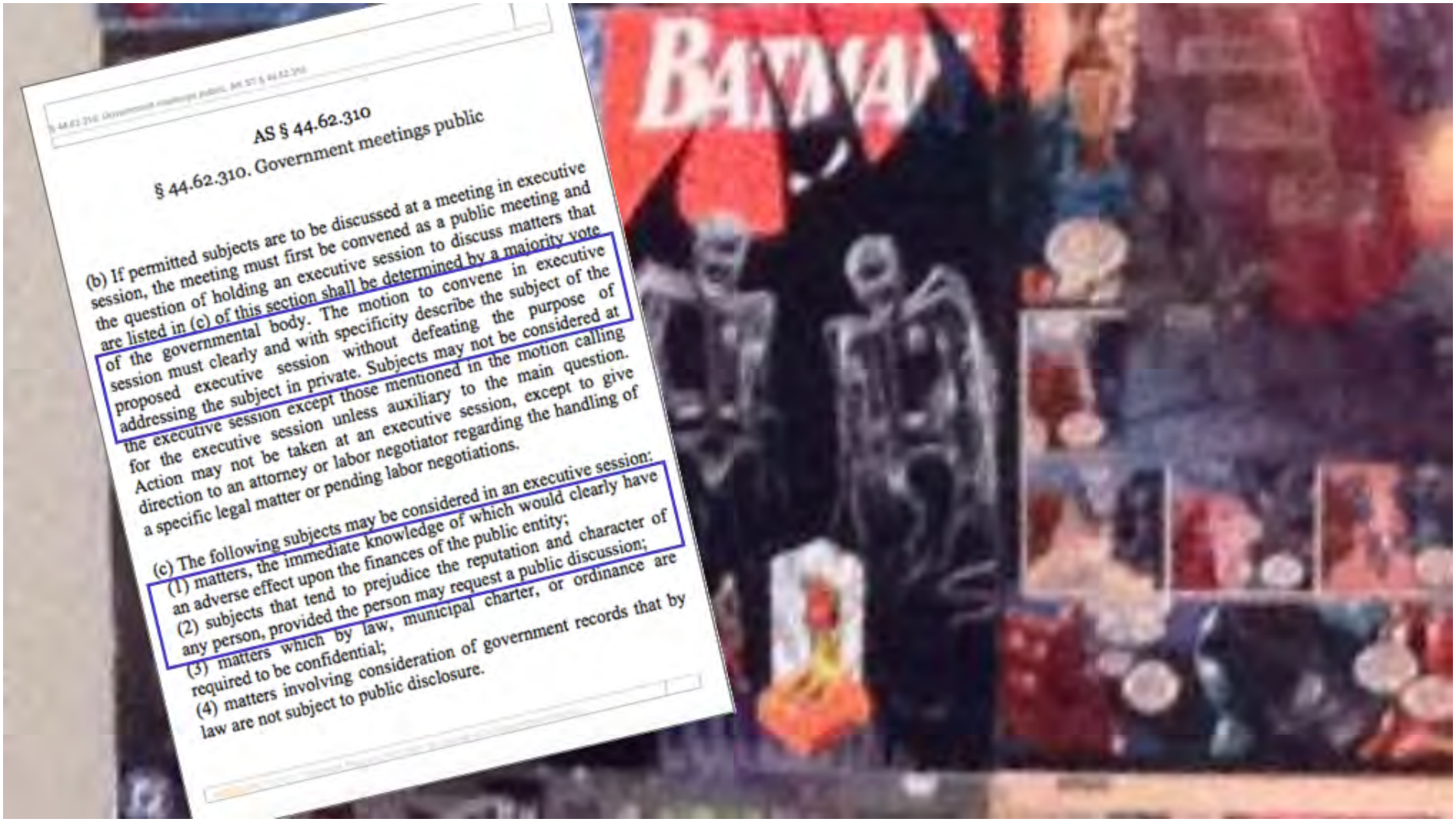
The time has come. The Board will consider a layoff of staff. This will be a difficult and touchy discussion. It would be much easier and better if it were in executive session. Under "New Business: Personnel and Staffing," you move "to go into executive session. The Board adopts the motion. Has the Board violated the Open Meetings Act?





AS § 44.62.310

§ 44.62.310. Government meetings public

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(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

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(4) matters involving consideration of government records that by law are not subject to public disclosure.

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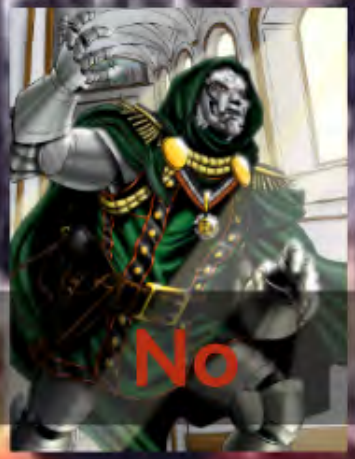
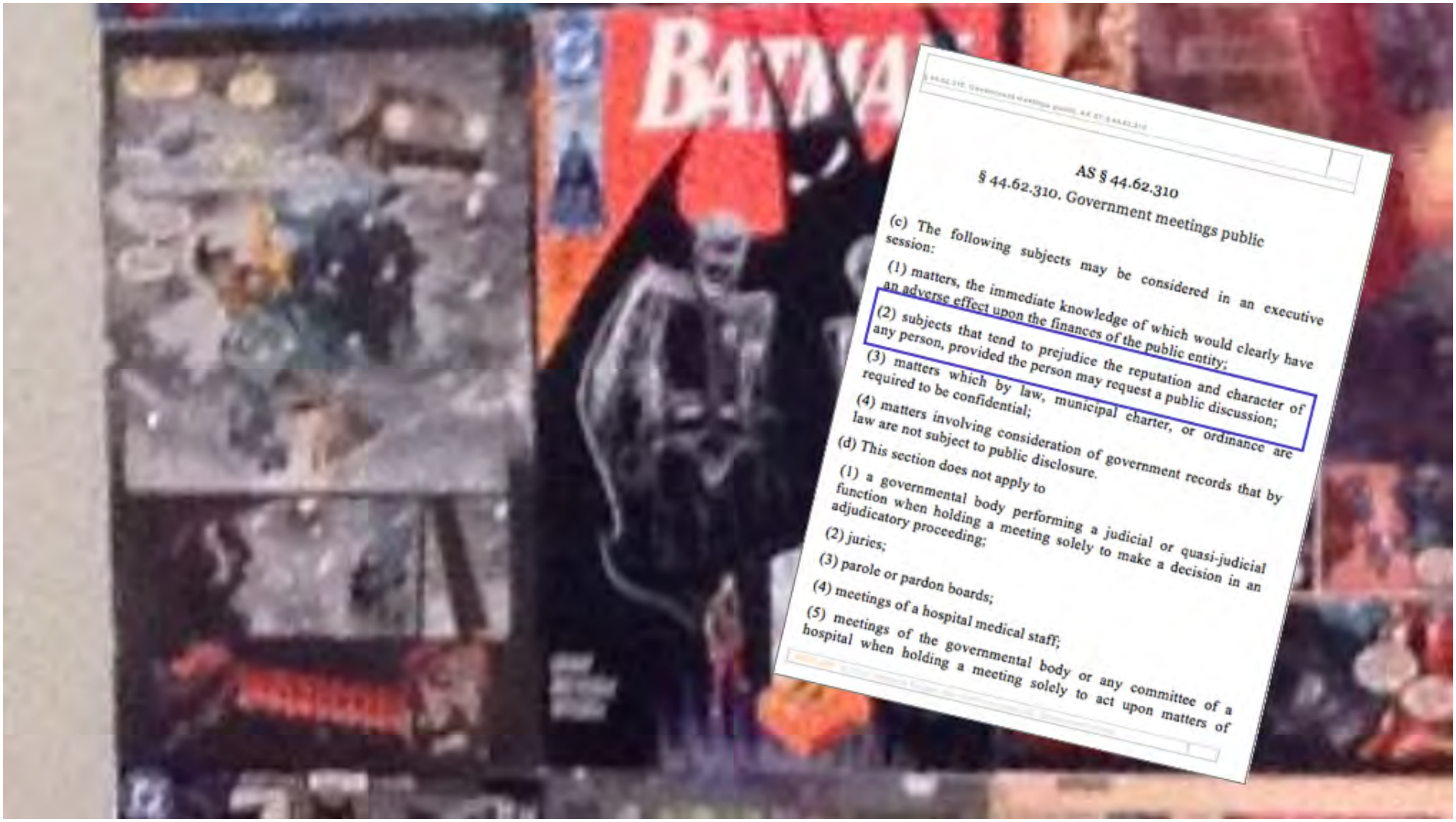
An employee who will for sure be part of any layoff requests to meet with the Board in executive session to explain "her side of the story."
Does the employee have the right to tell her side of the story to the Board in the executive session





AS § 44.62.310

§ 44.62.310. Government meetings public session:

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(4) matters involving consideration of government records that by law are not subject to public disclosure.

(d) This section does not apply to

(1) a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

(5) meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of

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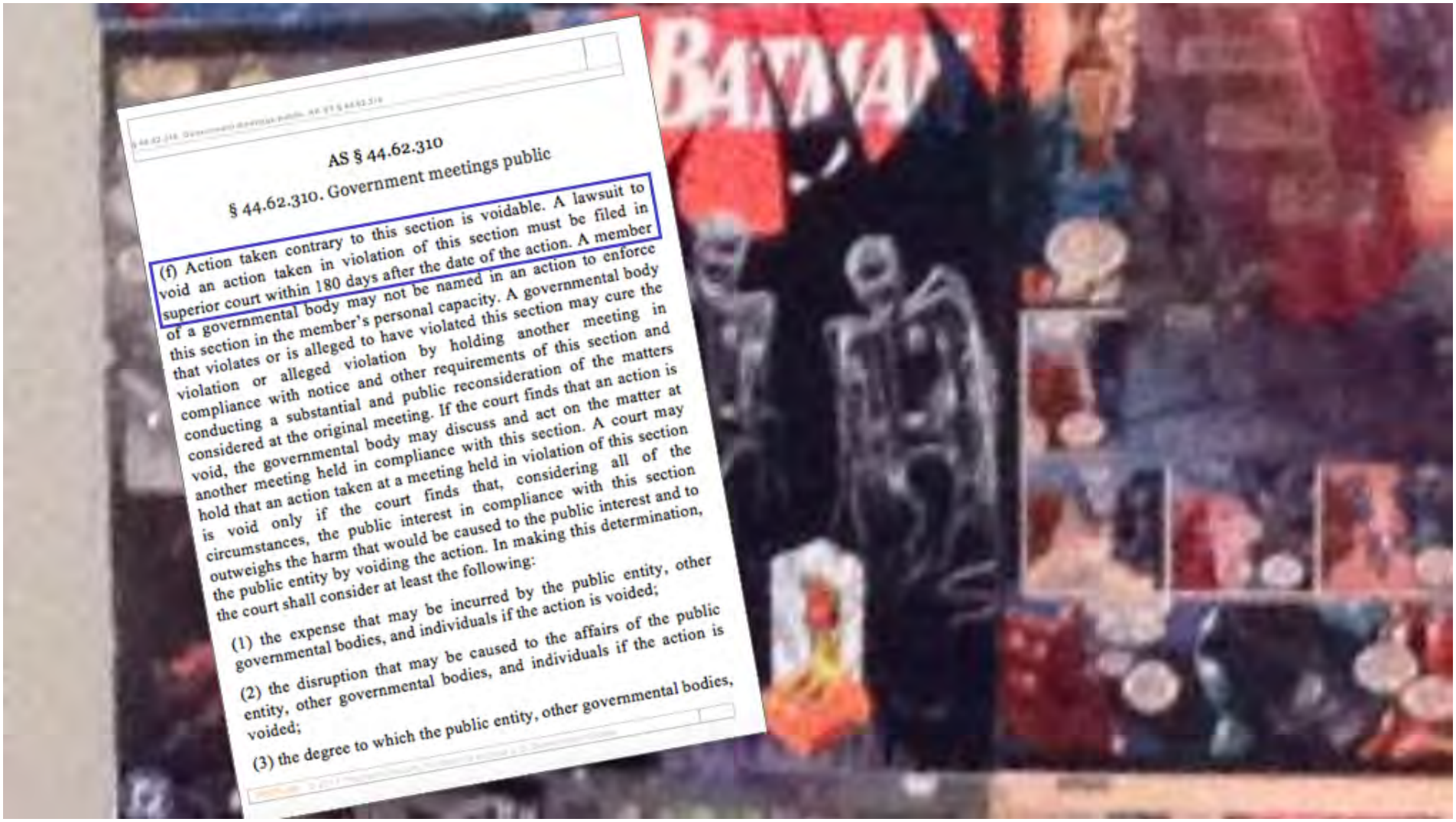
(d) This section does not apply to

While you are in the executive session discussing the layoff, one of the Board members begins to discuss the terrible playground fire. Others agree and you all begin discussing whether or not the District should spend $500,000 to improve the playground. When the public meeting reconvenes after the executive session, the next item under New Business is "Playground Fire Replacement." The motion passes quickly with little debate.

Parents of the high school students are outraged. They claim the decision was in violation of the Open Meetings Act and threaten to sue. Is there anything you can do?



AS § 44.62.310

§ 44.62.310. Government meetings public

(f) Action taken contrary to this section is voidable. A lawsuit to void an action taken in violation of this section must be filed in superior court within 180 days after the date of the action. A member of a governmental body may not be named in an action to enforce this section in the member's personal capacity. A governmental body that violates or is alleged to have violated this section may cure the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. If the court finds that an action is void, the governmental body may discuss and act on the matter at another meeting held in compliance with this section. A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section outweighs the harm that would be caused to the public interest and to the public entity by voiding the action. In making this determination, the court shall consider at least the following:

(1) the expense that may be incurred by the public entity, other governmental bodies, and individuals if the action is voided;

(2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided;

(3) the degree to which the public entity, other governmental bodies,

AS § 44.62.310

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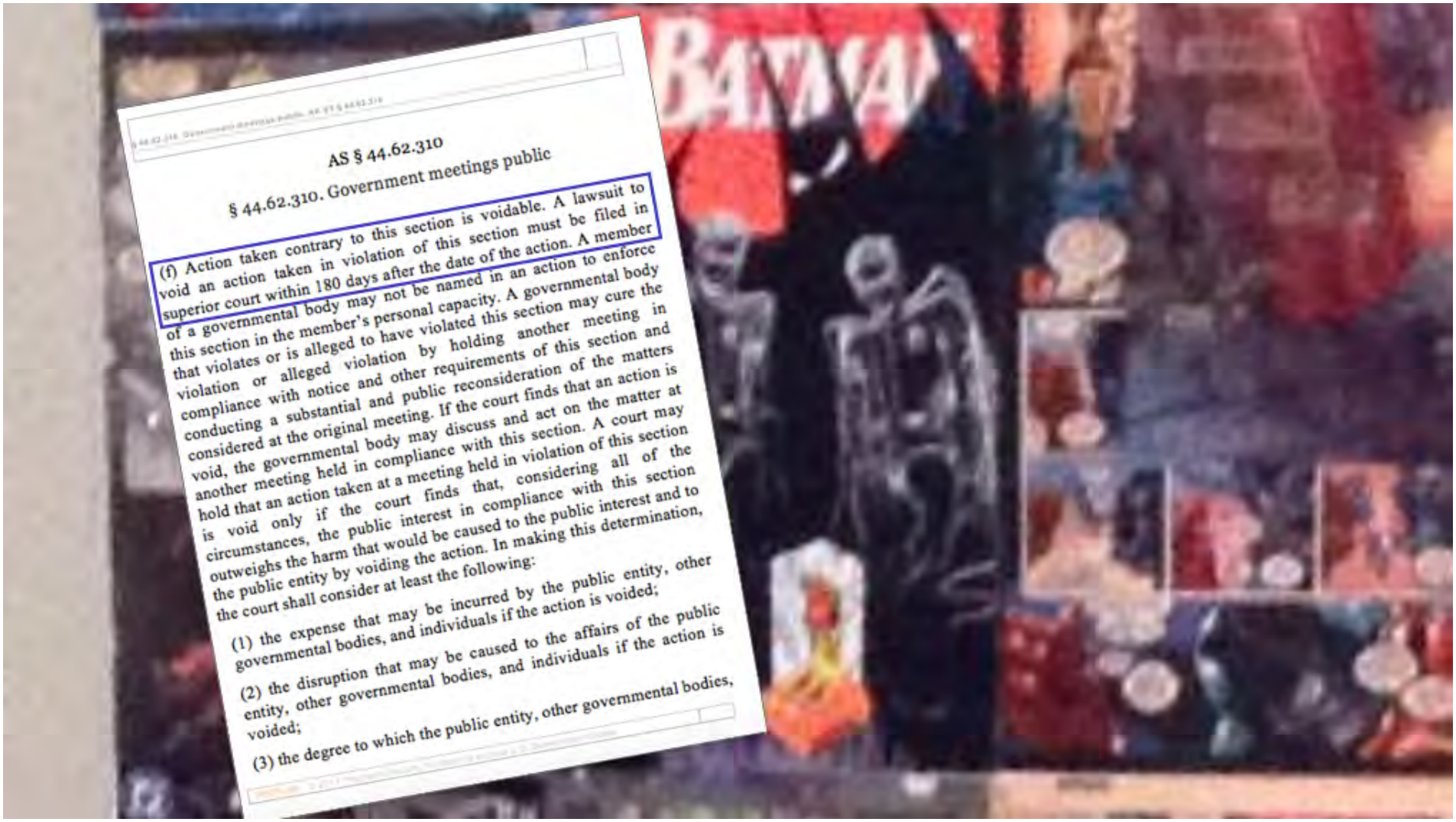

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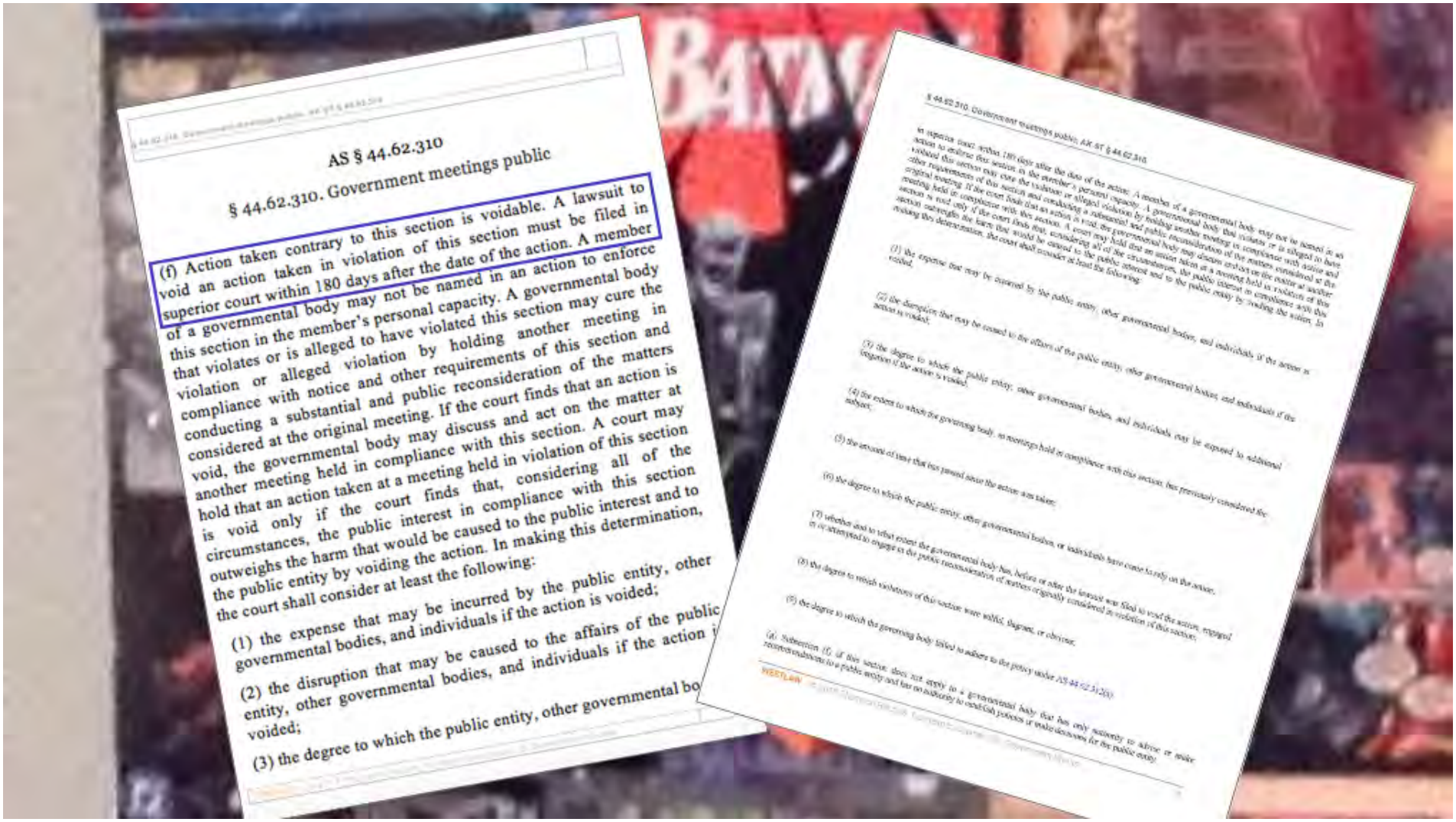

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(2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided;

(3) the degree to which the public entity, other governmental bodies, and individuals may be exposed to additional litigation if the action is voided;

(4) the extent to which the governing body, in meetings held in compliance with this section, has previously considered the subject;

(5) the amount of time that has passed since the action was taken;

(6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action;

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(5) the amount of time that has passed since the action was taken;

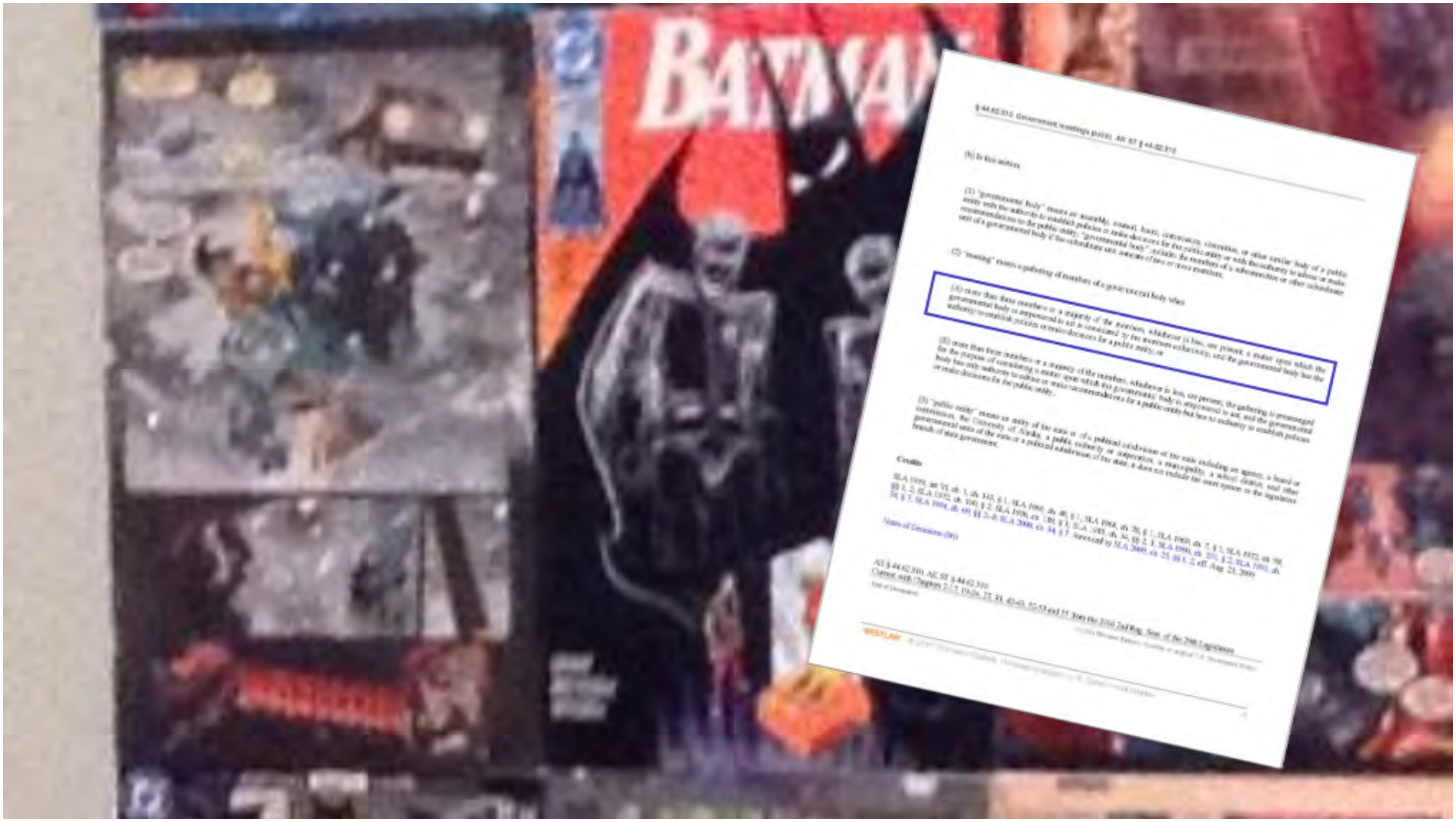
(6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action;

(7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of this section;

(8) the degree to which violations of this section were wilful, flagrant, or obvious;

(9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312(a).

You are preparing for the next Board meeting. You see a proposed budget revision that will cut important equipment replacement at your neighborhood school.
You call and text other Board Members one at a time and emphasize the importance of keeping this equipment replacement money in the budget.
Have you violated the OMA?


§ 44.62.310. Government meetings public. AK ST § 44.62.310
(b) In this section
(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members.
(2) "meeting" means a gathering of members of a governmental body when
(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or
(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity.
(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government.
Credits
SLA 1959, ch 93, § 1; SLA 1962, ch 48, § 1; SLA 1966, ch 46, § 1; SLA 1968, ch 76, § 1; SLA 1969, ch 2, § 1; SLA 1972, ch 98, §§ 1, 2; SLA 1992, ch 106, § 2; SLA 1996, ch 180, § 1; SLA 1998, ch 34, §§ 2, 3; SLA 1999, ch 200, § 2; SLA 1999, ch 34, § 7; SLA 1999, ch 99, §§ 2–4; SLA 2000, ch 34, § 7. Amended by SLA 2000, ch 35, §§ 1, 2, eff. Aug. 23, 2000.
Notes of Decisions (96)
AS § 44.62.310, AK ST § 44.62.310
Current with Chapters 2-7, 19-26, 32-39, 42-45, 52-53 and 57 from the 2010 2nd Reg. Sess. of the 26th Legislature
WESTLAW

(2) "meeting" means a gathering of members of a governmental body when

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(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

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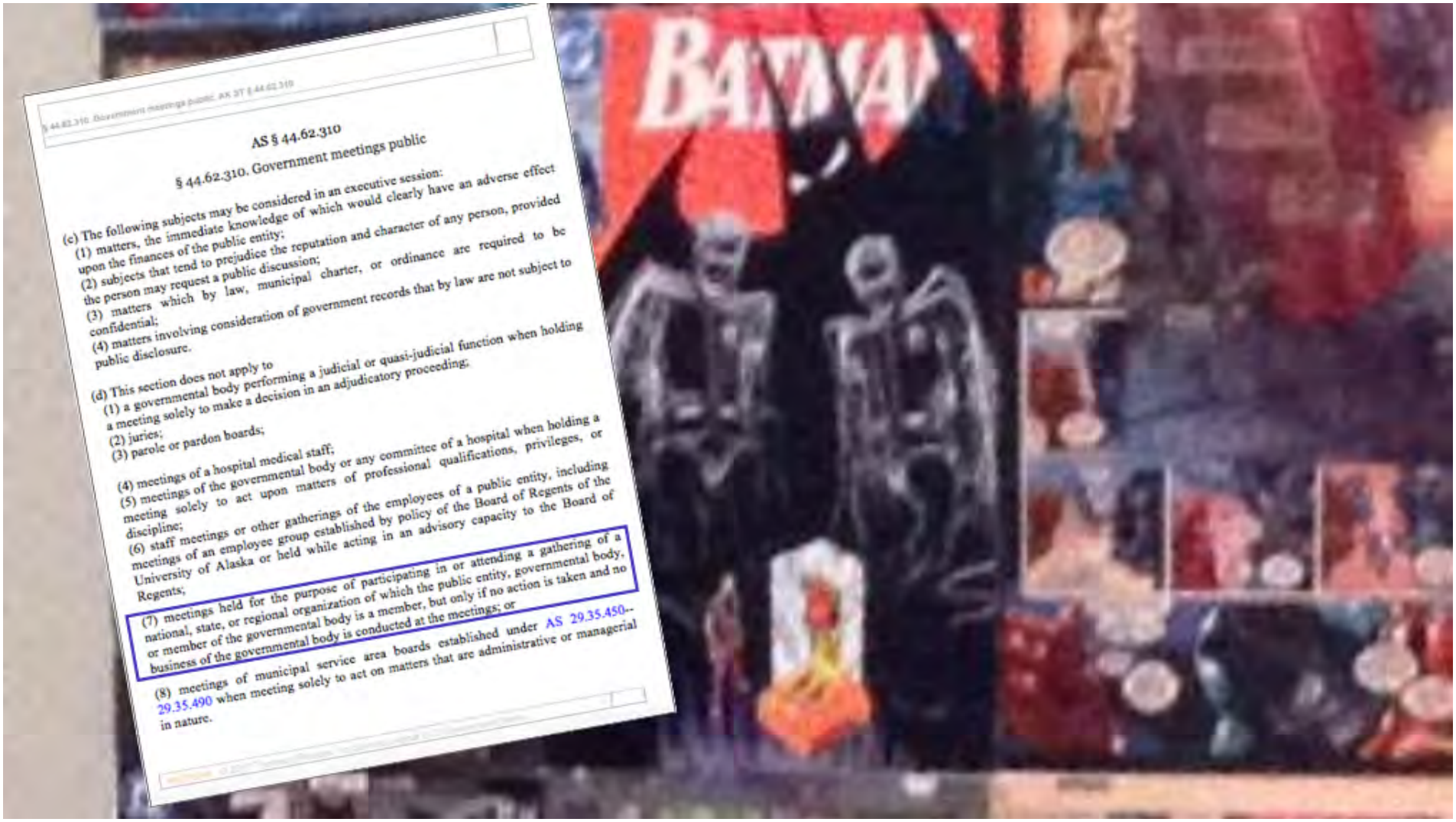
Credits

At a regularly-scheduled public Board meeting, your entire Board decides to attend AASB's annual convention next November.
On Thursday night, you and your fellow Board Members are eating dinner at Chef's Inn with 15 other School Board Members from around the state. A good time is had by all. A School Board Member from another District explains ESSA to the table and how it will apply to Alaska. The discussion is lively and you all learn a lot about ESSA.
Is this a violation of the open meetings act?



AS § 44.62.310

§ 44.62.310. Government meetings public

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(2) juries;
(3) parole or pardon boards;
(4) meetings of a hospital medical staff;
(5) meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges, or discipline;
(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents;
(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings; or
(8) meetings of municipal service area boards established under AS 29.35.450--29.35.490 when meeting solely to act on matters that are administrative or managerial in nature.

discipline;

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CAPTAIN AMERICA
THE AMAZING SPIDER-MAN
WOLVERINE
BATMAN
WONDER WOMAN