AASB Boot Camp
Legal Rights & Responsibilities

John M. Sedor
November 8th, 2018
We take the law seriously, not ourselves!
On a serious note: This is a presentation. It is for educational purposes only. It is not and is not intended to be legal advice. If legal advice is wanted, please follow appropriate district and/or school procedures.
Board Member Powers in General
Bruce Banner’s powers come when he gets, shall we say, frustrated.

When does a school board member’s powers exist?
A regional school board may

(1) sue and be sued;

(2) contract with the department, the provision of services, facilities,

(3) determine its own fiscal procedure;

(4) appoint, compensate, and otherwise subject to AS 39.25 (State Personnel

(5) adopt regulations governing organization, policies, and procedures for the operation of the schools;

(6) establish, maintain, operate, discontinue, and combine schools subject to the approval of the commissioner;

(7) recommend to the department projects for construction, rehabilitation, and improvement of schools and education-related facilities as specified in AS 14.11.011(b), and plan, design, and construct the project when the responsibility for it is assumed under AS 14.11.020;

(8) by resolution adopted by a majority of all the members of the board and provided to the commissioner of the department, assume ownership of all land and buildings used in relation to the schools in the regional educational attendance area, as provided for in AS 14.08.151(b);

(9) provide housing for rental to teachers, by leasing existing housing from a local agency or individual, by entering into contractual arrangements with a local agency or individual to lease housing that will be constructed by the local agency or individual for that purpose, or, without using for the purpose that portion of public school funding that consists of state aid provided under AS 14.17, by constructing or otherwise acquiring housing that is owned and managed by the regional educational attendance area for rental to teachers;

(10) employ a chief school administrator;

(11) apply for and use the proceeds of a loan from the Alaska energy efficiency revolving loan fund (AS 18.56.855);

(12) exercise those other functions that may be necessary for the proper performance of its responsibilities.
1. An individual Board Member has the right to:
   a) receive information provided to the School Board;
   b) attend and participate in board and committee meetings (regular committee, ad hoc committee, work sessions, executive sessions, regular board meetings, special board meetings, and retreats); and
   c) vote at regular board meetings and special board meetings, in accord with School Board policy and the Code of Ethics. Board members who are elected officers of the Board may have additional rights as outlined in the Code of Conduct, School Board policy and law.
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 TV for an unscripted interview. You are lured into a verbal attack against certain legislators and those who oppose both pre-K funding and investment in public schools in general. Unfortunately, a well-connected Senator, and friend of Tony Stark, 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.
Let’s pretend. You’re on the Board. A primary duty of the Board is to evaluate the Superintendent. You and other Board members have concerns and note your concerns on the evaluation and in a letter of warning to the Superintendent. Let’s also pretend it’s hard to keep secrets. Sometimes too hard. You email the evaluation and letter of warning to a parent who you trust… Unfortunately, your trust is misplaced. You get a demand letter from the Superintendent’s attorney. No worries: the District will insure and indemnify you for legal costs and any potential settlement or judgment.
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A school board shall insure or indemnify and protect the board… any member of the board… 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… 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…
Can your powers as a board member be taken away?

Yes  No
Can your powers as a board member be taken away?

Yes
AS § 15.45.510

§ 15.45.510. Grounds for recall

Currentness

The grounds for recall are (1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption.

Credits

SLA 1960, ch. 83, § 9.75.

Notes of Decisions (2)
What is micromanagement?
You are focused on going above and beyond the call of duty as a board member. You read the entire budget 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 superintendent and request a current personnel scattergram be created. You also ask for a listing of expenditures, including all backup, for the last 3 years to identify trends and cost saving areas.

Because this information is important, you are entitled to it.
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Anchorage School Board Code of Conduct

Board Member Requests to Administer on Non-Agenda Items

1. A Board Member will direct requests for information that are not readily available by ASD staff or of a confidential nature to the Superintendent and Board President.

2. Information requested by one Board member that is relevant to the entire Board will be provided by the Superintendent or the Board Secretary to all Board Members.

3. If the requested information requires significant staff time or cost, and the Board Member wishes to proceed, the request will be placed on the agenda as a Request For Information (RFI) at the next regular Board Meeting to determine the Board’s desire for the information.

4. If the Board determines to proceed with the request for information, it will determine with the Superintendent an appropriate timeline and means for presentation of the information to all Board Members. That determination will be made at the same meeting that the Board directs the development of the requested information.
1. Recognizing that Board Members may be approached by staff members, requests will be made that the conversations be “off the record,” Board Members will:
   a. Avoid disclosing confidential information and limit disclosing information that is not publicly available to individuals with a “need to know.” Recognizing that the identity of individuals may need to be disclosed when it is necessary, e.g., legal compliance.
   b. Listen politely and respectfully, but not make promises about actions to be taken.
   c. Keep the Superintendent informed as to the issue when it represents a significant concern to the ASD, though not always identifying who provided the information.

2. Communication pertaining to criminal, health or safety issues will be referred to the appropriate authorities or staff for action.

3. Board members may request information from ASD staff that is readily available. If the information is not readily available, the staff may refer the request to the Superintendent as a Request for Information (RFI).
The Open Meetings Act is designed to allow the public to watch board members deliberate and vote on agenda items. The School District just reorganized its board using secret voting (and cloakroom discussions). The new Board President is revealed during the first regularly scheduled board meeting.

Has the board violated the Open Meetings Act?

Yes  No
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Has the board violated the Open Meetings Act?

Yes  No
(a) All meetings of a governmental body of a public entity of the kind and class 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 an 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;

(3) matters which by law, municipal charter, or ordinance are required to be confidential;

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

(d) This section does not apply to
You and another board member are having lunch on the steps of the old Federal Building on 4th Avenue (it’s not that cold, 😊, and the hot dogs are on sale for only $8 each!)

You are discussing the upcoming board meeting agenda and how you plan to vote. You have not violated the OMA.

“Always be yourself, unless you can be Spiderman; then always be Spiderman.”

True or False
Another board member walks by, notices a mustard stain on your shirt, and stops to chat. The discussion again turns to the upcoming board agenda. Now you have violated the OMA.
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§ 44.62.310. Government meetings public, AK ST § 44.62.310

(h) In this section,

(1) “governmental body” means an agency, board, bureau, 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
Your School Board has chosen you to be on the Staff Curriculum and Equity committee. You will meet with four curriculum development staff, the HR director, and the CFO the third Friday of every month to discuss curriculum and equity. You are subject to the Open Meetings Act Posting Requirement.
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(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 in this subsection.

(b) If permitted subjects are to be discussed, the meeting must first be convened as a public meeting session to discuss matters that are listed as majority vote of the governmental body. The discussion must clearly and with specificity describe subjects that are not being considered at the 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.
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(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 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.
You and a Board member colleague are selected for the Board Legislative Affairs Committee for your Board. You two meet regularly and often both here and in Juneau and you receive many kudos from the Board, the community, and several legislators. You also receive ... a summons (lawsuit) for not posting your meetings. You will win the lawsuit.
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(h) In this section, "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;

(1) "governmental body" means an assembly, council, board, commission, or entity with the authority to establish policies or make decisions for the public entity; "governmental body" includes the members of a governmental body if the subordinate unit consists of two or more members; "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, 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;
(g) Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity.
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?
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(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 subcommittee unit of a governmental body if the subcommittee unit consist 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 is being considered, and the governmental body has the authority to establish policies or make decisions for the public entity, or

(B) more than three members or a majority of the members, whichever is less, are present, a matter is being considered, and 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 the public entity.

(3) "public entity" means an entity of the state or of a political subdivision thereof, the University of Alaska, a public authority, or any governmental unit of the state or a political subdivision of the state.

Credits

SLA 1999, art VI, ch 1, ss 1-10; SLA 1996, ch 48, ss 1, 2; SLA 1995, ch 74, §§ 7-8; SLA 1994, ch 60, ss 2-8; SLA 2000, ch 34, § 7. Amended by C32.

Notes of Decisions (86)

AS § 44.62.310, AK ST § 44.62.310
Current with Chapters 2-17, 19-24, 27, 33, 42-43, 52-53 and 55 from the 2016-17 Session.
The OMA applies to which of the following types of meetings?

A. Regular Meetings
B. Executive Sessions
C. Special Meetings
D. Work Session Meetings
E. All of the Above
F. Only A, B, and D.
The OMA applies to which of the following types of meetings?

E. All of the Above
(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) 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.

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(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;

3) matters which by law, municipal charter, or ordinance are required to be confidential;

4) matters involving consideration of government records that by law are not subject to public disclosure.
What is a work session?
So there you are: sitting in a work session on a blue sky, November day. Your focus on the meeting keeps getting distracted by thoughts of summer shrimping trips out of the Prince William Sound. Suddenly, you snap to attention: a fellow board member has just moved to go into an Executive Session during a Work Session. No matter how well crafted the motion, the board cannot go into an Executive Session during a Work Session.

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Title 44. State Government
Chapter 62. Administrative Procedure Act
Section 310. Government Meetings Public.

previous: Section 305. Judicial Relief in Administrative Matters.
next: Section 312. State Policy Regarding Meetings.

AS 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.

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This section does not apply to
ASD Policies – prior to 1/22/18

Section 100 - Board of Education

Work Sessions

165.4

Active

Work sessions shall be for an informal discussion by the Board. Work sessions may be called by the President or by three members of the Board. Notice shall be given as provided in Sections 161 and 163, with discussion limited to issues specified in the public notice. No official action shall be taken at work sessions.
Should Anchorage close schools? Here’s what the school district’s efficiency consultant says.

Of Anchorage’s neighborhood schools, Inlet View Elementary near downtown has the highest utilization. (Loren Holmes / ADN)

A consultant hired by the Anchorage School District suggested in a recent report that the district close an elementary school on Joint Base Elmendorf-Richardson and rebuild a tiny but popular school near downtown.

The report, by Shannon Bingham of Colorado-based Western Demographics, showed that some of Anchorage’s 75 or so neighborhood schools are in high demand, like Inlet View Elementary in South Addition, while others aren’t, like Aurora and Orion elementary schools on base.
Your school district does not have as much money as it would like ... and that was before the election! 😊

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 2019-2020 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 **25 hours** 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?**

"You’re not Superman, you know."

- Aunt May to Peter Parker
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(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.

Superior 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.

September 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, Robinowitz, 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) charter was required by charter to adopt a procedure for school board meeting; (7) plaintiff did not state a cause of action for injunctive relief, but its failure to state claim was not prejudice to the state, as the state is an indispensable party. AS 22.20.020, Rules of Civil Procedure, Rule 42(c).

The principle of Gheffais that statute created substantive right to peremptory challenge but that rule of criminal procedure determined whether the right was properly exercised and that procedural effect of peremptory applies with equal force to peremptory challenges of a judge in civil proceedings, AS 22.20.020, Rules of Civil Procedure, Rule 42(c).

Cases that cite this headnote

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 22.20.020, Rules of Civil Procedure, Rule 42(c).

Cases that cite this headnote

Judges

Waiver of Disqualification or Objections

Plaintiff did not waive his right to a peremptory challenge of judge in school closure case by stipulating to the consent of judge in increasing consolidation of schools before

Cases that cite this headnote
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.
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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.
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During a Board meeting, an executive session is held in which the Board votes on and gives direction to its negotiator on what direction the negotiations should take. A violation of the OMA has occurred.
(a) All meetings of a governmental body of a public entity must be open to the public except as otherwise provided by this provision of law. Attendance and participation at meetings of a governmental body of a public entity or by members of a governmental body may be by teleconference. Agency materials that are to be considered at the meeting must be available at teleconference locations if practicable. Except as otherwise authorized, the vote shall be conducted in such a manner that all persons entitled to vote may know the vote of each person entitled to vote. The votes by teleconference shall be taken by roll call. This subsection 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:
The time has come. The Board will consider a layoff of tenured staff. This will be a difficult and touchy discussion. It would be much easier and better for all involved if it were in executive session. Under “New Business: Personnel and Staffing, and Possible Layoffs” you move “to go into executive session.” The Board adopts the motion.

Has the Board violated the Open Meetings Act?
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Has the Board violated the Open Meetings Act?

Yes.
(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

(B) 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.
I’ve dedicated my life to teaching in Alaska. Here’s why I’m leaving.

I recently read an opinion piece published in the Anchorage Daily News titled, "Alaska, I’m breaking up with you." and while the tone set by the author does not mirror what I see every day in my classroom and my community, I must admit I could relate, because I too, am leaving Alaska.

I’ve dedicated my adult life to teaching. I’ve spent six wonderful years working as a middle school intervention teacher in the Anchorage School District. I care deeply about the students I work with and the lives they will lead after they leave my classroom. I’m currently a
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?

or
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?
(2) subjects that tend to prejudice the reputation and character of any person, **provided the person may request a public discussion**;
Don’t forget … negotiations are still on-going. 😊 You and a fellow Board member exchange emails on negotiation strategy and the Board decides to put that strategy to use. All is going well and according to plan…until the Superintendent calls to tell you that she just got a public records request that includes “all emails between board members regarding negotiations.” You…gulp. The emails will have to be disclosed under the Public Records Act.
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While you are in the executive session discussing negotiations, 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 no 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?
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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?**
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 action is void, the governmental body may hold that an action taken at an originally void meeting is void only if the court finds that the public outweighs the harm that would result to the public entity by voiding the action. In making this determination, the court shall consider at least the following:
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 subject matter of the original meeting. If the court finds that an action is void, the governmental body may discuss the meeting held in compliance with this section. A court may hold that an action taken by a governmental body is void only if the court finds that, considering all of the circumstances, the public interest in the section outweighs the harm that would be caused to the public interest and to the public entity that was 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, or individuals if the action is voided;

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

(7) whether and to what extent the governmental body has, before or after the lawsuit, 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 willful, flagrant, or obvious;

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

Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to another governmental body or official.
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 the other Board Members one at a time and emphasize the importance of keeping this equipment replacement money in the budget. You are careful to dialogue with only one member at a time.

Have you violated the OMA?

or

Yes

No
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 the other Board Members one at a time and emphasize the importance of keeping this equipment replacement money in the budget. You are careful to dialogue with only one member at a time.

Have you violated the OMA?
44.62.310. Government meetings public, AK ST § 44.62.310

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 that a 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) members are not present for the purpose of considering a matter upon which the governmental body has only authority to advise or make recommendations to 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, commission, the University of Alaska, a public authority or corporation, a municipal governmental unit of the state or a political subdivision of the state; it does not include a branch of state government.

“meeting” means a gathering of members of a governmental body when:

More than three members, or a majority of the members [meet]
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 Club Paris with 15 other School Board Members from around the state. A good time is had by all. A School Board Member from the Lake & Peninsula School District explains the ESSA transition plans to the table and how it will apply to Alaska. Other board members discuss the NAEP testing results and the challenges and opportunities it presents for Alaska. The discussion is lively and you all learn a lot.

Is this a violation of the open meetings act?

Yes

or

No
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 Club Paris with 15 other School Board Members from around the state. A good time is had by all. A School Board Member from the Lake & Peninsula School District explains the ESSA transition plans to the table and how it will apply to Alaska. Other board members discuss the NAEP testing results and the challenges and opportunities it presents for Alaska. The discussion is lively and you all learn a lot.

Is this a violation of the open meetings act?
(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;
Conflict of Interests
“I have successfully privatized world peace...”

Tony Stark
Your preferred candidate for an exempt certified administrative job with the District has a better chance of being hired since you were elected to the Board.
Your preferred candidate for an exempt certified administrative job with the District has a better chance of being hired since you were elected to the Board.
The Chief school administration shall select, appoint, and control employees “subject to the approval of the Board”.
AS § 29.20.010

§ 29.20.010. Conflict of interest

(a) Each municipality shall adopt a conflict of interest ordinance that provides that

(1) a member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter;

(2) the presiding officer shall rule on a request by a member of the governing body to be excused from a vote;

(3) the decision of the presiding officer on a request by a member of the governing body to be excused from a vote may be overridden by the majority vote of the governing body; and

(4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.
ANCHORAGE, ALASKA
AO No. 2017-42, As Amended

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY REPEALING AND REENACTING ANCHORAGE MUNICIPAL CODE CHAPTER 1.15, CODE OF ETHICS.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code Chapter 1.15, Code of Ethics, is hereby repealed and reenacted. As required by AMC 1.05.050B, the current text of AMC Chapter 1.15 is attached.

CHAPTER 1.15
CODE OF ETHICS

1.15.010 Title.
1.15.020 Purpose.
1.15.030 Scope.
1.15.040 Use of Municipal Resources.
1.15.050 Gifts.
1.15.060 Conflicts of Interest.
1.15.070 Elected Officials – Consultation, Representation, and Appearance on Behalf of Private Interests on a Matter of Municipal Government.
1.15.080 Charitable Nonprofit Board Member Services
1.15.090 Contemporaneous Employment or Service
1.15.100 Interest in Municipal Contract or Business with Municipality
1.15.110 Political Activity
1.15.120 Confidentiality and Use of Nonpublic Information
1.15.060 Conflicts of Interest.

A. Minor or Substantial Conflict of Interest: The assembly recognizes that in a representative democracy, the representatives are drawn from society and, therefore, are potentially affected by interests that may conflict with their public duties. Substantial financial or private interests of the assembly members are to be disclosed to the board of ethics.

B. Public Interest: Financial interests of the public servant's immediate family are included in this chapter. Prior to participation in official action, the public servant shall disclose financial or private interests for determination of whether they are substantial.

D. General Rule – Conflict of Interest and Official Action: A public servant shall not participate in any official action in which the public servant or a member of the public servant's immediate family has a substantial financial or private interest. Prior to participation in official action, the public servant shall disclose financial or private interests for determination of whether they are substantial.
E. **Substantial Financial or Private Interest:** Whether the financial or private interest disclosed is substantial shall be determined on a case-by-case basis, with evaluation and balancing of these factors:

1. Whether the financial or private interest is a substantial part of the matter under consideration.

2. Whether the financial or private interest directly and substantially varies with the outcome of the official action.

3. Whether the financial or private interest is immediate and known or conjectural and dependent on factors beyond the official action.

4. Whether the financial or private interest is significant monetarily.

5. Whether the financial or private interest is of a type which is generally possessed by the public or a large class of persons to which the member belongs.

6. Other factors deemed appropriate by the presiding official under the specifics of the disclosure and the nature of the action.
“I’m not saying I’m Spiderman. I’m just saying that no one has ever seen me and Spiderman in a room together.”

- Peter Parker