

MEMORANDUM

(Open Session Report)

State of Alaska
Department of Law

to: Board of Agriculture and
Conservation

Division of Agriculture,
Department of Natural Resources

DATE: January 17, 2013

FILE NO.: BAC general

TEL. NO.: (907) 269-3039

SUBJECT: AAG report for
January 22, 2013 BAC
meeting

FROM: Bob McFarlane
Assistant Attorney General
Commercial & Fair Business Section
Anchorage

PART 1: NON-CONFIDENTIAL MATTERS FOR OPEN MEETING SESSION

1. Valley Dairy: Update: VDI closed its doors and ceased operations on Sunday, December 30, 2012. The division promptly took possession of the premises and we have reached an agreement with the landlord for access to the property through February, 2013. Before the assets of VDI can be sold the board is required to determine whether the sale of the assets will have a “significant effect” on the agricultural industry. The board is also required to determine if financing will be offered for the collateral sold at auction.

Recommendation: I don’t believe that disposal of VDI’s equipment will have a “significant effect” (either positive or negative) on the agricultural industry. VDI has already ceased doing business and disposing of the equipment won’t affect anyone who hasn’t already been affected by the closing. I recommend a finding of no “significant effect” on the agricultural industry. Also, VDI equipment and vehicles will be offered for sale separately and not as a single lot. I don’t believe that ARLF financing is necessary under the circumstances. I don’t recommend that financing be offered.

PART 2: CONFIDENTIAL MATTERS FOR EXECUTIVE SESSION

Open Meetings Act – A.S. 44.62.310(b)¹
Attorney Client Privilege - Alaska Evidence Code §503(b)²

¹ A motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session. A.S. §44.62.310(b).

Board of Agriculture and Conservation Statutes³
ARLF Regulations⁴

1. Other Legal issues concerning sale of VDI assets: See separate confidential report with legal advice on minimum bids, disposal of perishable collateral and offset bids. Such matters are confidential attorney-client communications and are also protected by AS 44.62.310 (c)(1).

² Section 503(b) of the Alaska Evidence Code states in relevant part: “A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client...”

³ AS 03.09.040 authorizes the board to classify some loan and marketing information confidential.

⁴ 11 AAC 39.061 makes most loan information confidential and 11 AAC 39.031(f) authorizes the board to meeting in executive session to consider loan applications.