

MEMORANDUM

(Open Session Report)

State of Alaska
Department of Law

to: Board of Agriculture and
Conservation

Division of Agriculture,
Department of Natural Resources

DATE: March 18, 2016

FILE NO.: BAC general

TEL. NO.: (907) 269-3039

SUBJECT: AAG report for
March 31, 2016 BAC
meeting

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

PART 1: NON-CONFIDENTIAL MATTERS FOR OPEN MEETING SESSION

Disposal of Mt. McKinley Meat and Sausage: The Board of Agriculture and Conservation will hold a public hearing to take comments regarding disposal of Mt. McKinley Meat and Sausage at its meeting on March 31, 2016. Before the board can dispose of the meat plant, 11 AAC 39.700(b) requires the board to address the public comments in a decisional document. The board has some flexibility when it comes to setting a price and other terms. Under 11 AAC 39.720, an asset disposal can be conducted by public auction, competitive proposals, or “other manner determined in writing by the board to be in the best interest of the state.” A copy of 11 AAC 39.720 is attached to this memo. The Agricultural Revolving Loan Fund can finance up to 95% of the purchase price, with installment payments up to 30 years. Like other asset sales with contract financing, this asset disposal is required to be “as is” with no representations or warranties of any kind.

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
Board of Agriculture and Conservation Statutes³

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

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...”

ARLF Regulations⁴

Legal advice relating to requirements and procedures for disposal of meat plant as well as terms to be included in any disposal documents.

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

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

11 AAC 39.720. Method of disposal

(a) Except for a revocable use permit approved under 11 AAC [39.705\(a\)](#), disposal of real property must be noticed to the public under 11 AAC [39.730](#).

(b) Following public notice under 11 AAC [39.730](#), real property must be disposed of using one or more of the following methods:

(1) competitive sealed bid;

(2) public auction;

(3) competitive proposals;

(4) competitive lease;

(5) competitive lease with option to purchase;

(6) other manner determined in writing by the board to be in the best interest of the state.

(c) Before disposal, the board will establish the terms and conditions for the disposal of property of the fund, including whether financing by installment contract will be available, minimum down payment, interest rate, minimum acceptable bid, and bid deposit.

(d) The board may dispose of property of the fund for cash or under an installment contract.

(e) The board will not grant cash discounts on the disposal of property of the fund.

(f) The board may require a bid deposit to be submitted with a bid. The successful bidder's deposit is non-refundable and will be applied to the purchase price. The bid deposit will be returned to any unsuccessful bidder.

(g) The balance of the purchase price for property of the fund is due within 90 days after the date that the offer has been accepted by the board.

(h) The board may consider a written request to extend the date of the balance due for reasonable cause shown.

(i) If the successful bidder fails to meet the terms and conditions of the sale, the board will cancel the award and the successful bidder will forfeit the bid deposit.

(j) Personal property that has a value greater than \$1,000 and is not perishable must be noticed to the public under 11 AAC [39.730](#) and disposed of competitively.

(k) Personal property that has a value of less than \$1,000 or that is perishable does not require notice under 11 AAC [39.730](#), but notice must be posted on the Alaska Online Public Notice System and posted at the division offices before disposal. The board may dispose of the property under this subsection in any manner determined reasonable by the board and consistent with AS 03.10.

History: Eff. 11/27/88, Register 108; am 10/27/2002, Register 164

Authority: [AS 03.09.040](#)

[AS 03.10.020](#)

[AS 03.10.050](#)