

MEMORANDUM

(Open Session Report)

State of Alaska

Department of Law

to: Board of Agriculture and
Conservation

Division of Agriculture,
Department of Natural Resources

DATE: April 22, 2010

FILE NO.: BAC general

TEL. NO.: (907) 269-3039

SUBJECT: AAG report for May
3, 2010 BAC meeting

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

PART 1: NON CONFIDENTIAL MATTERS FOR OPEN MEETING SESSION

1. **Hartman Collection.** The probate attorney is still waiting for certified copies of the death certificates from Vital Statistics. Until those certificates are received he can't file the application for appointment of a personal representative and I can't begin the foreclosure. Based upon my discussion with the other attorney's secretary this morning I am going to hazard an estimate that he will have the certificates within a week since it appears that Vital Statistics is just waiting for his payment information.

2. **Geier Chapter 13 case.** Mr. Geier was about 2 weeks late making his February payment to the trustee but he finally made it in early March. He is now current on his payments to the trustee.

3. **Legislation updates.** There were several bills of interest to the BAC considered by the legislature this last session. The following is a status summary of those bills:

A. **HB 70 – Farm-to-school program.**

This bill passed with unanimous support in both houses. This bill allows schools to establish vegetable gardens for educational purposes and it also requires school procurement officials to work with producers to help get Alaska grown food into the schools. This bill has a sunset provision for July 1, 2014. The following is a brief summary of each section of the bill:

Section 1 of the bill amends AS 03.05.010(a) by implementing the "farm-to-school" program established in section AS 03.20.100.

Section 2 of the bill amends AS 03.20 by adding a new section (AS 03.20.100) establishing the “farm-to-school” program. The purpose of this section is to increase the procurement and use of Alaska grown agricultural products in public schools. It requires the Department of Natural Resources to work with school procurement officials and others for uniform procurement policies and procedures to facilitate the purchase and use of food grown in Alaska. It also requires the department to assist food producers, distributors and brokers to market food grown in Alaska and to support efforts to advance farm-to-school activities including school gardens, school farms, and farm visits.

Section 3 of the bill amends AS 14.07.020(a) by adding new subsection (18), which requires the department of Education to assist the Department of Natural Resources in developing and implementing the farm-to-school program established under AS 03.20.100.

Section 4 of the bill adds a new section to AS 14.30. This new section (AS 14.30.375) allows a school district to authorize or operate a school garden, greenhouse or farm for educational purposes and for growing fruits and vegetables for consumption by the students through the school districts meal and snack program. It also allows the excess fruit and vegetables to be sold.

Section 5 of the bill is a sunset provision which repeals all of the above sections on July 1, 2014.

B. HB 108 – Foreclosures.

This bill, sponsored by Rep. Ramras, makes numerous changes to Alaska’s foreclosure law. This bill passed. Two big changes to existing law are 1) the requirement that foreclosure notices be posted on an internet website and 2) qualifying bidders will be allowed to bid by telephone or email. There are changes to the notice requirements and a host of other changes as well. I don’t believe this bill will have any significant affect on the Hartman foreclosure.

C. HB 225 – Amendment of the Procurement Code.

I reported to the board on this bill at the previous meeting. The bill made changes to certain provisions of the procurement code including those related to the purchase of agricultural products. At the Senate Finance Committee meeting on 4/8/10 there was a general feeling that this bill was too complicated and needed further work. This bill did not pass.

D. HB 300 – Appropriations.

This bill makes appropriations to the Plant Materials Center, ARLF and the Division of Agriculture (as well as other agencies and departments). The bill contains the following statement in connection with the agriculture appropriations: “It is the intent of the legislature that the Department of Corrections purchase agricultural products directly from Alaskan Farmers whenever practical.”

E. HB 326 – Supplemental Budget.

This is the bill that contains the provision for re-appropriation of the \$600,000 that was originally appropriated to assist Mat Maid. This bill passed.

F. HB 383 – Transfer of Certain DNR Duties to Dept. of Commerce.

This bill did not pass. I anticipate that it will be introduced again when the next legislative session begins.

4. Legal research on 3 year loan extension under A.S.03.10.030(c).

Research on this issue has been completed and a summary of the research is attached to this memo. The bottom line is this: The 3 year loan extension provision was meant to help farmers who, as the result of crop failure or other unanticipated financial circumstances, are unable to pay their operating loans at the end of the one year operating loan term. It was not meant as a way to enable an applicant to get a 3 year operating loan or increase the amount of an operating loan by amortizing it over a longer period of time. Future extension requests should be limited to situations where there has been an unanticipated financial problem and where extension of the one year operating loan term will help the borrower recover from an unexpected financial setback.

5. Legal research on ability of BAC to deny loan application for refinancing.

Research on this issue was not complete at the time this memo was due. I will have information available for the board at the scheduled meeting on May 3, 2010.

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

There are no confidential reports to the board for this meeting.

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).

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...”