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Tenure for Public Schools  
14.20.175 Nonretention

Guy Stouts - USA prst denied tenure  
sued - said Colt should have open meetings  
under open meeting law. He won.  
went to state Supreme Court (univ. appealed)

Now Provisions of Regs law are put into  
univ. regs - do give public notice & give public  
meeting if requested

Peer review. subordinate may be  
judging their boss. Would be ineritent  
to give honest open opinion if that  
person is given tenure & sob. was let-out  
on giving them tenure

whole Univ. community is invited to comment  
on tenure issues.

1) main purpose is ~~that~~ for people who have  
negative criticism to make can make in  
safe situation

current law helps keep nonsense out

relevant & Grievance - one ~~events~~ closed

## Promotion, Retention

~~private~~ person who wants open takes president.

Sabatical leave - considered in relationship to each other (25 might apply) - would rank in order of pres. what if some want open & others don't.

Merritt thinks we need to have law somewhere between present & SB317.

Maybe voting could be done in private  
current law prohibits voting in private

If meeting were held in private, tenure may be awarded less frequently

DRAFT  
POSITION PAPER

by, MERRITT HELFFERICH

The decision by the Alaska Supreme Court in *University of Alaska v. Geistants*, which brought home to the University the requirements of AS 44.62.310, has raised considerable question about the potential detriment to the State's Interest if University of Alaska committee meeting to judge the professional qualifications of Faculty members are held in open session.

The various peer review meetings; promotion, tenure and sabbatical Leave Committee meetings make decisions which affect the finances and the quality of the faculty at the University. In *ACCFT v. University of Alaska, et al.* The Alaska Supreme Court stated that, "AS44.62.310, by ensuring that issues are decided publicly, does attempt to insure that better substantive decisions are made through public scrutiny and adequate information." Further the Court stated, "Open decision-making is regarded as an essential aspect of the democratic process. It is believed that public exposure deters official misconduct, makes government more responsive to its constituency, allows for greater public provision of information to the decision-maker, creates greater public acceptance of government action, and promotes accurate reporting of governmental processes."

The decision-making process at Colleges and Universities on the qualifications of its faculty for Tenure, Promotion and Sabbatical Leave are, on the one hand, personnel decisions. In most University Communities, the faculty and student body are involved in these personnel decisions as a matter of tradition arising from the belief held for centuries that the faculty and students are the most knowledgeable and capable judges of faculty qualifications. The administration of a College or University has historically been considered to act in the role of a support group, rather than that of the directive role in an industrial organization.

In a publicly supported University there is a frequent clash between the Legislative mandate to control the purse strings and the University's role as a self governing body. Reflective of this clash is the common constitutional separation, in the states, of the University from other state agencies.

The question arises immediately, should the personnel actions at a University, or at any state agency for that matter, be conducted in public in a democratic process? Should the University conduct its personnel decisions in a manner "responsive to its constituency" as other governmental bodies or should the University make these decisions removed from public pressure and based solely on the qualifications and goals set for the institution by the faculty, students, and administration?

Another question arises which is the result of the conflict between the rights to privacy of the individual faculty member (the state has determined that the personnel files of individual state employees are private information) and the requirement for accountability of the government to the people. The Alaska Supreme Court stated in *University of Alaska v. Geistants* that, "admittedly, the policy decision as to whether or not tenure committee meetings should be open is debatable. Nevertheless, the wisdom underlying a particular legislative enactment is not a justifiable question." In fact, it is that wisdom which is now under debate.

The question whether to offer tenure to a faculty member is considered, by UAF Vice Chancellor for Academic Affairs, Dr. William Phillips, to be the most important academic decision at a University. Such a decision sets the standards of research, instruction and public service at one segment of the University for many years. Any conditions or administrative barriers which tend to direct this decision away from the established qualifications for tenure potentially damage the quality of the institution.

Concern has been expressed, among the University Community, that the exposure of the voting process to public view may, in turn, later expose the members of a qualifications committee to retribution. Members of a tenure committee or peer review committee who vote against the qualifications of a faculty member who, in turn, subsequently receives the desired status, may later find themselves judged in the promotion or sabbatical leave consideration by the person they voted against. This could subvert the process because the qualifications committee may fear to vote against the award of promotion, sabbatical or tenure.

We believe that at <sup>the</sup> <sup>last</sup> philosophical separation of the University of Alaska from other state administrative agencies by the Alaska Constitution and the delegation of University governance to the Board of Regents reflects the decision that the University's management and operation is different than that of the rest of the State of Alaska's governmental management and operation. We believe that personnel decisions should not be a democratic process and when they are coupled to academic decisions they should be conducted in as nurturing a manner as possible. We also believe that the judgment of faculty qualifications are both academic and personnel decisions and as such should not be covered by the open meeting law 44.62.310 and suggest that the following phrase be added to the exceptions section of the open meeting law:

44.62.310(d)

6. Meetings of the faculty qualifications committees of the University of Alaska when holding a meeting solely to act upon matters affecting professional qualifications of a faculty member for consideration for promotion, sabbatical leave or tenure.

SENATE STATE AFFAIRS COMMITTEE

Date received 6/25/83

Bill Number SB 317 Title AN ACT RELATING TO PUBLIC MEETINGS

Fiscal Note	Position Paper	Date requested	From	Amount	Date Rec'd Note	Rec'd Paper

CONTACTS

Backup list

Wendy Redmond  
Merritt Hillfrick  
474-712

HEARING INFORMATION

NOTES:

6/25/83 RLV... END OF SESSION. NOTHING ORDERED.

FINAL ACTION \_\_\_\_\_

DATE \_\_\_\_\_

Dr Mackinnon

although uncomfortable at times (open meeting law) it doesn't bother public schools too much

unique situation in University cannot draw correlation between this & public schools

Dr. Charles

"Tod" Ray - UAF

in ~~tot D~~

College of Human & Rural Development

Don

Sharon Young recommended call him.

Don thinks NEA may like bill better if person can appear before board at some time.

✓ on current procedure.

Introduced: 6/25/83  
Referred: State Affairs  
and Judiciary

BY V.FISCHER, FAHRENKAMP,  
AND JOSEPHSON

1 IN THE SENATE

2 SENATE BILL NO. 317

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public meetings; and providing  
7 for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 14.40.160(a) is amended to read:

10 (a) The provisions of AS 44.62.310 apply to meetings of the  
11 Board of Regents. All meetings of the board, its committees or sub-  
12 committees, are open to the public and press except as otherwise  
13 provided in AS 44.62.310(c) and (d). The findings of an executive  
14 session shall be made a part of the record of the proceedings of the  
15 Board of Regents. All records of the meetings and proceedings shall  
16 be open to inspection by the public and the press at reasonable times.

17 \* Sec. 2. AS 44.62.310(d) is amended by adding a new paragraph to read:

18 (6) meetings of a subordinate unit of the University of  
19 Alaska, advisory or otherwise, held solely to act upon matters of  
20 professional qualifications, privileges, or discipline.

21 \* Sec. 3. AS 44.62.310(f) is amended to read:

22 (f) Action taken contrary to this section is voidable. An  
23 action for violation of this section must be commenced within six  
24 months of the violation [VOID].

25 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
26 10.070(c).

Quoted in Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd., Sup. Ct. Op. No. 1963 (File No. 3697), 602 P.2d 434 (1979).

Stated in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Public Administrative Law, §§ 553-775.

Article 6. Agency Meetings Public.

Section

310. Agency meetings public

312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. 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. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

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

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

(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.

(d) This section does not apply to

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

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Section

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- (2) juries;
- (3) parole or pardon boards;
- (4) meetings of a hospital medical staff; or
- (5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976)

**Effect of amendment.** — The 1976 amendment added the second and third sentences of subsection (a).

A meeting of the board of governors of the Alaska Bar Association in Hawaii in 1978 was not subject to the

requirements of this section. *Horowitz v. Alaska Bar Ass'n*, Sup. Ct. Op. No. 2059 (File Nos. 4310, 4311), P.2d (1980).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, *Administrative Law*, §§ 281, 282.

**Sec. 44.62.312. State policy regarding meetings.** (a) It is the policy of the state that

- (1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;
- (2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
- (3) the people of this state do not yield their sovereignty to the agencies which serve them;
- (4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;
- (5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972)

**Revisor's note.** — AS 44.62.312(a) is based on Cal. Gov't C.A., sec. 54950. Cross reference. See note under AS 44.62.310.

**Legislative history report.** — For report on ch. 98, SLA 1972 (SB 253), see 1972 House Journal, p. 158.

## Article 7. Legislative Review of Rules.

### Section

320. Legislative annulment of regulations and review

**Sec. 44.62.320. Legislative annulment of regulations and review.** (a) The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman and all members of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460 together with the fiscal information required to be prepared under AS 44.62.195. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975; am § 5 ch 64 SLA 1978; am § 3 ch 16 SLA 1980)

**Effect of amendments.** — The 1978 amendment substituted "At the same time" for "Within 45 days after" at the beginning of subsection (b).

The 1980 amendment inserted "and all members" following "chairman" near the middle of subsection (b), and added "together with the fiscal information required to be prepared under AS 44.62.195" at the end of subsection (b).

**Constitutionality of legislative veto.** — The legislative veto contained in subsection (a), which provides that the "legislature, by a concurrent resolution adopted by a vote of both houses, may

annul a regulation of an agency or department," violates art. II of the state constitution. *State v. A.L.I.V.E. Voluntary*, Sup. Ct. Op. No. 2022 (File No. 3670), 606 P.2d 769 (1980). But see Alaska Const., art. II, § 22, which was proposed by the 11th legislature's Legislative Resolve No. 1 and will be voted on at the next general election in November, 1980.

No implied general power to veto agency regulations by informal legislative action exists. *State v. A.L.I.V.E. Voluntary*, Sup. Ct. Op. No. 2022 (File No. 3670), 606 P.2d 769 (1980).

**Article 8. Administrative Adjudication**

Section	Section
330. Application of AS 44.62.330 — 44.62.630	490. Amendment of accusation after submission
340. Delegation of power by agencies	500. Decision in a contested case
350. Appointment of hearing officers	510. Form and effect of decision
360. Accusation	520. Effective date of decision
370. Statement of issues	530. Default
380. Service of accusation	540. Reconsideration
390. Notice of defense	550. Petition for reinstatement or reduction of penalty
400. Amended or supplemental accusation	560. Judicial review
410. Time and place of hearing	570. Scope of review
420. Form of notice of hearing	580. Continuances
430. Subpoena	590. Contempt
440. Depositions	600. Mail vote
450. Hearings	610. Charge
460. Evidence rules	620. Power to administer oaths
470. Evidence by affidavit	630. Impartiality
480. Official notice	

**Sec. 44.62.330. Application of AS 44.62.330 — 44.62.630.** (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 — 44.62.630. This

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(f) Meetings of any subordinate unit of the University of Alaska, advisory or otherwise, when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

See 3

\*\* AS. 44.62.310(f) is amended to read:

Action taken contrary to this section is voidable. No person may bring an action for a violation of this section unless commenced within six months.

Vic -

Any chance we can  
put w/ SB 111  
(I move w/in 2 next  
two days?) WK