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STATE OF ALASKA
THE LEGISLATURE

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POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Hess:

February 18, 1988

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/3/88

FURTHER REFERRALS: Finance

DATE: 2-18-88

The Health, Education and Social Services Committee has considered HB 424

"An Act relating to the state Board of Education."

RECOMMENDS:

- replace with CS HB 424 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Handwritten signatures: J. Ellis, Mike Kopona, Anne Keating, Rob E. Gelle, Neil Ford]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signatures: Mark Funkhouser, David Joubert]

[Handwritten signature: J. Ellis]
 Co-Chairman's signature
[Handwritten signature: Mike Kopona]

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB-424
Publish Date: _____

Revision Date: _____
Title: State Board of Education

Agency Affected: Education
BRU: Boards and Commissions

Sponsor: Ellis
Requestor: House HESS

Components: State Board of Education

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Steve Hole
Division: Commissioner's Office

Phone: 465-2800
Date: 2/17/88

Approved by Commissioner: William G. Demmert
Agency: Department of Education

Date: 2/17/88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- (Office of Management and Budget)
- Impacted Agency(ies)
- Senate Secretary



Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

FOUCHV
JUNEAU, AK 99811
465-3759

DRAFT

DRAFT

DRAFT

LETTER OF INTENT
TO
HB 424
BY THE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

It is the intent of the House Health, Education and Social Services Committee that the governor consider the state Board of Education's traditional method of selecting student and military members when making appointments.

The student and military members are currently appointed through a two tiered selection process. The Alaska Association of Student Governments (AASG) and the Commanding General each submit a list of three candidates for appointment. The state Board of Education then interviews the finalists and selects the representative members.

Rep. Niilo Koponen, Co-Chair
House HESS Committee

Rep. Johnny Ellis, Co-Chair
House HESS Committee

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

February 11, 1988

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

465-3603

Honorable Johnny Ellis
Honorable Niilo E. Koponen
Co-chairmen
House Health, Education, and
Social Services Committee
Alaska State House
P.O. Box V
Juneau, Alaska 99811

Re: Potential constitutional
problem with HB 424 (State
Board of Education members)

Dear Co-chairmen Ellis and Koponen:

House Bill 424 would amend the statutes governing the State Board of Education to provide that the member representing military reservation schools and the student member would be full voting members of the board, rather than mere advisory members, as they are under present board bylaws. While that may be a laudable goal, we believe the bill may have a constitutional problem.

Section 3 of the bill would amend AS 14.03.085(b) to provide that the representative of the military reservation schools and the student member "shall be appointed from a list of nominees proposed by the board and submitted to the governor." We believe that provision would be an infringement on the executive power of appointment under art. III, § 26, Alaska Constitution. That section provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the

Honorable Johnny Ellis and
Honorable Niilo E. Koponen
Re: HB 424 (State Board of Education)

February 11, 1988
Page 2

appointment shall be subject to the approval of the governor.

Section 25 of art. III is similar with respect to other department heads, providing for appointment by the governor subject to confirmation by a joint session of the legislature. At issue is whether the legislature may impose additional restrictions on the governor's appointment power, limiting the governor to appointment from a list of nominees submitted by some other entity, in this case the incumbent State Board of Education.

In Bradner v. Hammond, 553 P.2d 1 (Alaska 1976), in considering whether the legislature could by statute make other executive branch officers subject to legislative confirmation, or whether art. III, §§ 25 and 26, describe the outer limits of the legislature's confirmation authority, the Alaska Supreme Court held that legislative confirmation is not a distinct legislative power, but rather is a specific attribute of the appointment power of the executive. It held that sections 25 and 26 "mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government."

We believe the courts would reach a similar result in determining whether the legislature can impose by statute a requirement that the governor's appointments to a board that is "at the head of a principal department or a regulatory or quasi-judicial agency" be made from a list of nominees submitted by some other entity. Because the appointment power is an executive power and the only role constitutionally delegated to the legislature is that of confirmation, the doctrine of separation of powers leads us to conclude that the legislature does not have the constitutional authority to require that the governor make appointments to those bodies from a list of nominees submitted by some other entity. Any statute imposing such a requirement is likely to be struck down by the courts as an unconstitutional legislative infringement on the executive appointment power.

For the above reasons, we recommend that HB 424 be amended to remove the sentence beginning on page 1, line 28. AS 14.07.085(a) would still require that the governor consider recommendations made by recognized educational associations in the state, but would not require that the appointment be made from lists of nominees submitted by those organizations. Please

Honorable Johnny Ellis and
Honorable Niilo E. Koponen
Re: HB 424 (State Board of Education)

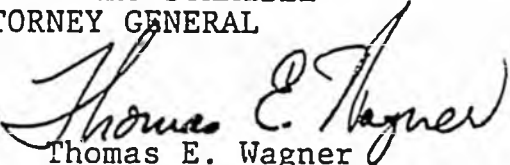
February 11, 1988
Page 3

contact me if you have questions regarding my comments on this matter.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Thomas E. Wagner
Assistant Attorney General

TEW:jal

cc: Arthur H. Peterson
Bob Evans

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

WHILE IN SESSION
PO. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704

ALASKA STATE HOUSE

OFFICE OF MAJORITY WHIP



CO-CHAIR
HEALTH, EDUCATION & SOCIAL SERVICES

LABOR & COMMERCE
SUBCOMMITTEE ON FOREIGN TRADE

REPRESENTATIVE JOHNNY ELLIS

M E M O R A N D U M

TO: All House Members

FROM: Rep. Johnny Ellis *JE*

DATE: January 25, 1988

SUBJECT: Co-sponsorship of State Board of Education
Legislation

I plan to introduce the attached legislation which is in response to the 1987 Alaska Girl's and Boy's State legislation and the Alaska Association of School Governments resolution requests that the student and military members of the State Board of Education be granted voting rights.

Currently the State Board of Education consists of seven voting members appointed by the Governor for five year terms. The student and military representatives are appointed by the Board of Education for one year advisory terms.

The enclosed legislation would grant the student and military members voting privileges and make their yearly appointments the responsibility of the Governor. As is currently the tradition of the Board, representatives may be reappointed for successive terms if they remain qualified. Nominess for appointment will be proposed by the Board and submitted to the Governor.

I ask for your support in encouraging greater student and military participation on the Board by granting their requests to become voting members. I plan to introduce this legislation on Friday January 29th. Please contact Leola Weimer of my staff at x3704 by this Thursday if you wish your name to be added as co-sponsor of this bill.

Student Vote Resolution

Whereas, current Alaska Statute stipulates that a student member of the Alaska Association of School Governments serve on the Alaska State Board of Education in an advisory capacity, and

Whereas, past experience has shown that the student advisory members possess sufficient levels of maturity and competence to handle the responsibility of voting; and

Whereas, policies effected by the Alaska State Board of Education have a large and direct impact on the student population, and

Whereas, students are aware of problems and situations on the education system that adults may not be immediately cognizant of, and

Whereas, other states, including California and Rhode Island, have had favorable results with having a voting student member on their State Boards of Education, and

Whereas, Alaska Girl's State 1987 and Alaska Boy's State 1987 have passed legislation supporting this concept.

Therefore, be it resolved, that the Alaska Association of School Governments supports and encourages legislative measures to increase the size of the Alaska State Board of Education by one member, establishing the student advisory member as a full voting member.

1 IN THE SENATE

BY EDUCATION

2 SENATE BILL NO. 4

3
4 IN THE LEGISLATURE OF ALASKA GIRLS STATE

5 A Bill for an Act entitled: "An Act relative to the change in membership status
6 and voting rights of the student member on the
7 State Board of Education; and providing for an eff
8 ive date."

BE IT ENACTED BY THE LEGISLATURE OF BOYS' STATE.

9 *Section 1. AS 14.07.075 is amended to read:

10 Creation. There is created at the head of the Department of Education
11 a Board of Education consisting of nine [seven] members. (1 ch 96 SLA 1967)

12 *Section 2. AS 14.07.085 is amended to read:

13 Appointment of members. (a) The nine [seven] members of the board, no
14 more than five [four] of whom shall be members of the same political party
15 as the governor, shall be appointed by the legislature in joint session
16 In appointing board members, the governor shall consider recommendations
17 made by recognized educational associations in the state.

18 (b) One member shall be appointed from each of the four judicial districts

19 and three from the state at large with at least one member representing
20 regional educational attendance areas. one student member shall be

21 appointed from the state at large who, during his/her term of office,

22 is currently enrolled in any Alaska high school. The governor shall

23 appoint the student member only upon the endorsement of the student

24 by the Alaska Association of School Governments (A.A.S.G.) and the

25 State Board of Education currently instated. One military member

*Section 2. This Act takes effect on _____

Signed by: HOUSE SPEAKER

Greg Caterinichio

CLERK

Linda Linkel

SENATE PRESIDENT

Jennifer Brunner

SECRETARY

Jodi Cooper

GOVERNOR

Kelly Paulson

Date: 11 JUNE 87

1 shall be appointed from the state at large who, during his term of office,
2 is currently stationed at any military base within the state of Alaska.
3 The governor shall appoint the military member only upon the endorsement
4 of the military joint command and the State Board of Education.

5 (c) The members are entitled to the expenses, travel, and per diem
6 allowances provided by law.

7 (d) A member may act and receive compensation from the date of ap-
8 pointment until confirmation or rejection by the legislature. (1 ch 96
9 SLA 1967)

10 *Section 3. AS 14.07.095. is amended to read:

11 Term of office. The members of the board, with the exception of the
12 student member, shall be appointed for overlapping five-year terms com-
13 mencing February 1 of the year of appointment. A member appointed to
14 fill a vacancy serves for the unexpired term of the member whose vacancy
15 is filled. A vacancy occurring during a term of office is filled in the
16 same manner as the original appointment. The student member shall be
17 appointed for one, one year term commencing on the first August meeting
18 of the board and terminating at the end of the first June meeting of the
19 board. (1 ch 96 SLA 1967)

20 *Section 4. AS 14.07.105. is amended to read:

21 Quorum and chairman. (a) Five [Four] members constitute a quorum.

22 (b) The board shall designate one member of the board as the chair-
23 man who serves as chairman of the board at the pleasure of the board.
24 (1 ch 96 SLA 1967)

25 *Section 5. AS 14.07.110. is amended to read:

26 Removal. Members of the board serve at the pleasure of the governor
27 with exception of the military and student member. The military and/or
28 student members may be removed upon request of the governor and mai-
29 ority vote of the board. (1 ch 96 SLA 1967)

30 *Section 6. AS 39.05.100. is amended to read:

31 Qualifications for appointment. (a) A person appointed to a board or
32 commission of the state government, with the exception of a student ap-
33 pointee, shall be and have been before the last general election, (1) a

1 registered voter in the state, if the appointment is made at large or (2)
2 a registered voter from the judicial district, if the appointment is made
3 from a specific judicial district.

4 (b) A member of a board or commission of the state government who ceases
5 to reside in the state during the member's term terminates membership on the
6 board or commission. For the purposes of this section, the acceptance of
7 employment outside the state for a six-month period or longer, or physical
8 absence from the state for one year or longer, or registration as a voter in
9 a voting precinct outside the state is considered as discontinuing residence
10 in the state. (ch 64 SLA 1955; am 1 ch 167 SLA 1957)

11 *Section 7. AS 44.19.130. is amended to read:

12 Appointment to boards and commissions. (a) Notwithstanding AS 39.05.100
13 or a provision of law relating to age, the governor may appoint any resident
14 of Alaska to a board or commission if recommended by the commission.

15 (b) A young person recommended by the commission may be appointed to
16 boards or commissions with or without special qualifications for membership
17 if the proposed nominee, except for age, meets the required qualifications
18 as set by law.

19 (c) An individual appointed to a board or commission under this section
20 is entitled to the rights, privileges, and responsibilities of other mem-
21 bers, and the appointment is subject to confirmation by the legislature
22 when required by law. No additional seat on a board or commission is cre-
23 ated by virtue of AS 44.19.123--44.19.130. (1 or 101 SLA 1971)

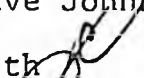
Media
Read it
Tell me what it says
FEB 5 1988

MEMORANDUM

February 5, 1988

SUBJECT: House Bill 424, relating to the composition
of the State Board of Education

TO: Representative Johnny Ellis

FROM: Jack Chenoweth 

May I submit the enclosed for addition to the record as the House considers the above-captioned bill.

The author of the letter served five years as the advisory military representative on the State Board of Education, concluding his service this past summer due to his reassignment to a Florida Air Force Base.

Enclosure



DEPARTMENT OF THE AIR FORCE
AIR FORCE SYSTEMS COMMAND REGIONAL HOSPITAL EGLIN (AFSC)
EGLIN AIR FORCE BASE, FLORIDA 32542 5300

22 Jan 98

Dear State Board Members,

Recently, I was asked to proffer an opinion regarding the military advisor position on the State Board of Education. Specifically, the question was raised whether the military advisor should be a voting member or remain in an advisory capacity. As in most things, I do have an opinion!

Evaluating my own role and overall effectiveness for the last five years as a non-voting advisory member is better left to your judgement. However, I certainly came to one conclusion, and that was in regard to the student member. I watched four young adults spend their time and energy, often to the detriment of their grades, and certainly for the most part not a lot of fun, dedicate themselves to the issues as tenaciously as any of the more senior members. The question is then, why shouldn't they vote, assuming the political climate is right for such a change? I respected their opinions but sometimes wondered if those opinions were brushed aside because they did not have the weight of a valid vote. I suspect that I am correct. Not when the issues were relatively innocuous but when they became more emotional and heated. And as they did, shorter attention was paid to either advisory members comments. This is certainly not to be condemnatory, but merely a philosophical observation, I believe, of human nature.

Should the military member vote? As with all the board members, the time I spent on Board duties impacted on my private and professional life. Should my time spent be any less 'important' than theirs? The implication being that if the advisory member was not present, it certainly did not affect the legal status of the board. The question was raised by legal counsel in 1983, although ignored, whether advisory members could even sit in executive session. Somewhat demeaning wouldn't you think? The military in the State of Alaska I suspect, approaches fifteen percent of the total population or even better. Although I never really thought of myself as 'representing' only the military of Alaska, it is certainly viewed that way by many others and presumed that we could act on matters that impacted the military member or their families. I believe that is a sizeable responsibility and should be honored with a valid vote.

The real danger is for the advisory member to lose interest and is probably more critical for the military member than the student, due to the normal tenure of one year for the student. If your comments are not taken seriously, if it does not really matter if you are present or not, and if you come and go rather more frequently than the regular member it is easy to not take any issue too seriously. Whether this happens to others I cannot say, but it did on occasion happen to me. I would not have lasted with the first board because of the closed attitude they appeared to have toward the advisory members. The second board was about one-half of the present members, and was much, much more open and easier to work with. The present board? Only the current advisory members can say. I say they should vote, why not ask them?



ROGER K. STROSNIDER, Colonel, USAF, DC
Base Dental Surgeon

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 7, 1988

SUBJECT: Draft bill relating to the membership of
the Board of Education (W.O. 5-1565 A)

TO: Representative Johnny Ellis, Jr.

FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is a bill enlarging the State Board of Education by adding two members - a military reservation school representative and a student member.

Under the bill as drafted, the military reservation school representative must be a registered Alaska voter. Military personnel frequently retain their residence in another state while they are stationed in Alaska. As a result, a large body of potentially interested, and otherwise qualified persons will be disqualified from serving on the board. The registered voter requirement for the military reservation school representative can be waived, if you want to exempt this person from the requirement.

For your information, the current military reservation school liaison to the board is not a registered voter in Alaska according to the Division of Elections.

Enclosure

GU:bb
WKB1/24

STATE OF ALASKA
THE LEGISLATURE

JAN 25 1988
FOUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 25, 1988

SUBJECT: Appointment of Members of the State
Board of Education (W.O. 5-1565)

TO: Representative Johnny Ellis

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to the question of whether the State Board of Education could appoint the student and military members of the board, subject to the approval of the Governor.

The authority to appoint the members of a board that is at the head of a principal department lies exclusively with the Governor under Article III, Section 26 of the Alaska Constitution.

When a board or commission is at the head of a principal department or regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. . . . Art. III, Sec. 26 (in part)

The State Board of Education is at the head of the Department of Education, a principal department of state government. The Governor has the exclusive authority to appoint the members of the board. The Governor's authority to appoint members of the board cannot be limited by a statute that forces the Governor to appoint a specific individual. The proposal to allow the State Board of Education to select the student and military members of the board subject to the approval of the Governor would result in an invasion of the Governor's authority to appoint. Even though the Governor could reject the person selected by the board, and thus retain the ultimate control over who is appointed to the board, the fact that the Governor could only accept or reject the person would defeat the intent of

Representative Johnny Ellis
Page 2
January 25, 1988

the constitution that the Governor have exclusive authority to appoint members of the board. A law delegating responsibility for appointments of certain members of the State Board of Education to the board would be subject to constitutional challenge.

The Alaska Supreme Court strictly construes the Alaska Constitution in regard to the power of the Governor to make executive appointments. In Bradner v. Hammond, 553 P.2d 1 (Alaska, 1976), the court found that the Legislature's only powers to "meddle" in appointments by the Governor were limited to those powers expressly mentioned in the constitution. The Legislature could not extend its powers by enacting a statute. Given the court's position that the Legislature cannot extend its power over the Governor's appointments by statute, it is unlikely that the court would allow the Legislature to dilute the Governor's authority to make appointments by requiring the Governor to accept or reject appointments made by the State Board of Education.

A process whereby the Governor would select the student and military members of the board from a list of nominees prepared by the board is less offensive to the Governor's authority than the proposal discussed above. However, this process could become suspect if the Governor must select appointees from the list, because the Governor's authority and discretion would be limited. If the Governor is allowed to appoint the student and military members from this list of nominees, rather than required to appoint from the list, there would not be an unconstitutional invasion of the Governor's authority. The Governor would retain full authority and discretion to appoint whomever the Governor desired.

If I can provide further discussion of this issue, please contact me.

GU:bb
WKB1/095

MEMORANDUM

State of Alaska
Department of Education

TO: Members, State Board of Education DATE: January 15, 1988

FILE NO: 88-74

THRU: Commissioner William Demmert TELEPHONE NO: 465-2800

FROM: Rosemary Hagevig *RH*

SUBJECT: Consideration of Regulations
for Adoption: 4 AAC 03
Adoption, Repeal, Amendment
of State Board of Education
Regulations

HISTORICAL BACKGROUND

In the context of the annual review of the Bylaws of the State Board of Education, the committee found that much of the material that had been contained in the Bylaws would be more appropriately placed in regulation. As a result the attached regulations were revised and were sent out for public comment. No adverse comments were received and the regulations are now ready for adoption.

ALTERNATIVES

1. Adopt the regulations as presented.
2. Postpone action until a date certain.

DEPARTMENT RECOMMENDATION

It is recommended that the Board adopt the regulations in 4 AAC 03.101-.03.100 dealing with adoption, repeal and amendment of the regulations clarifying and expanding the organization, duties, meeting procedures and membership of the State Board of Education.

*Sealed:
adopted by the
State Board of
Education Jan 27, 1988.
RH*

4 AAC 03 is amended by adding a new subsection to read:

4 AAC 03.025. ADVISORY MEMBERS OF STATE BOARD. (a) In addition to the number of members authorized by law, the board shall appoint as advisory members

(1) one military representative; and

(2) one student, who is enrolled in a state secondary education program.

(b) Installation commanders at Elemendorf AFB, Fort Richardson, Eielson AFB, Fort Wainwright, Fort Greely, and Adak Naval station may each select one person to serve as the military representative under (a)(1) of this section. The senior military commander in Alaska shall nominate the three best qualified persons among those selected by the installation commanders, or may nominate any others whom the senior military commander wishes the board to consider as the military representative. The senior military commander in Alaska shall submit the names of the three nominees to the board, providing a written statement of qualifications or resume for each candidate whose name is submitted. The board shall select an advisory member from among the nominees whose names have been submitted by the senior military commander, and shall set a term of membership for the military representative appointed not to exceed three years.

(c) The Alaska Association of School Governments may nominate candidates for the appointment of a student representative under (a)(2) of this section. The association shall nominate not less than two nor more than five persons for consideration for appointment as the student representative, and submit the names of nominees to the board, providing a written statement of qualifications or resume for each nominee whose name is submitted. The board shall select a student advisory member from among the nominees whose names have been submitted. The board shall select the student advisory member at the last regular meeting of the school year. The term of the student advisory member is one year, commencing with the first board meeting of each school year.

(d) Advisory members appointed under this section are entitled to expenses, travel, and per diem allowances provided by law.

(e) Advisory members appointed under this section may participate in the work of the board, and may deliberate and debate matters brought to the attention of the board. An advisory member may cast an advisory vote, but an advisory vote is not counted in determining the disposition of board matters.