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(5) have satisfactorily completed a physical examination within 30 days of the date of application; the physical examination required of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(6) be at least 25 years of age.

(c) An applicant for a limited pilot's license not meeting the requirements of (b)(2) and (3) of this section may be issued a limited license, if in the opinion of the board he has submitted sufficient proof of experience and knowledge for the area in which he is applying. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42)

Authority: AS 08.62.040(a)(2)

**12 AAC 56.050. QUALIFICATIONS FOR CHANNEL PILOT'S LICENSE.** A channel pilot's license is a license to pilot in main ship channels only. A channel pilot may perform docking and undockings only under the direct supervision of a pilot holding an unlimited pilot's license. An applicant for a channel pilot's license shall apply on forms provided by the Department of Commerce. An applicant shall

(1) pay the required fee; and

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license for first-class pilot upon the waters for which applying; and

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master of steam or motor vessel of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels; and

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the water for which he is applying, which will be determined by oral and written examination before the board from topics listed in sec. 70(b) and (c) of this chapter; and

(5) have completed satisfactorily a physical examination within 30 days of the date of application; the physical examination required

of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(6) be at least 25 years of age. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50)

Authority: AS 08.62.040(a)(2)

**12 AAC 56.060. TEMPORARY LICENSE.** (a) A temporary license may be issued to a person applying for an unlimited, limited or channel pilot's license upon

(1) submission of the required application; and

(2) submission of the temporary license fee of \$50; and

(3) submission of proof that he meets all requirements for the license for which he is applying except the examination requirement; and

(4) successful passing of a written examination consisting of 20 questions with a score of at least 75 percent; the questions will be taken from a list of 100 questions prepared previously by the board; this examination will not be considered as part of the oral and written examination given by the board under sec. 70 of this chapter, but will cover the same topics.

(b) A temporary license will be valid until the results of the next scheduled examination are received. If for a valid reason the applicant was unable to appear for the next scheduled examination, the board may extend the temporary license until the next scheduled examination after the one for which the applicant was unable to appear. The temporary license shall not be extended more than once nor shall a second temporary license be issued.

(c) An applicant for an extension of route may receive a temporary permit by appearing before two board members and taking a written and oral examination for the requested area. If the applicant passes the examination, a temporary extension of route permit will be issued which

will remain in effect until the next scheduled meeting of the board when the application will be reviewed for permanent licensure. The applicant need not appear at the scheduled meeting. If permanent licensure is approved, the area will be added to the license; if it is disapproved, the temporary permit is void as of the date of disapproval. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50; am 6/30/78, Reg. 66)

Authority: AS 08.62.040(a)(2)

**12 AAC 56.070. EXAMINATIONS.** (a) The examination required by secs. 30, 40 and 50 of this chapter will be given at least once a year at the time and place designated by the chairman of the board with prior approval of the other board members. All applications for examination must be submitted to the board at least 60 days before the date of examination.

(b) Applicants must pass the written portion of the examination with a score of at least 75 percent in each topic with the exception of (1) of this subsection, inland and pilot rules, which must be passed with a score of at least 90 percent. The written examination may consist of, but not be limited to, the following topics:

- (1) inland and pilot rules;
- (2) aids to navigation;
- (3) courses, distances, and distances passed abeam at change of course points between given points;
- (4) important and essential cable areas;
- (5) dredged channel widths and depths;
- (6) bridge signals, widths, regulations, and closing periods;
- (7) ship handling, docking problems, seamanship by actual observation, use of tow boats and anchors;
- (8) Alaska Pilotage Act and rules of the board;
- (9) location of anchorages;
- (10) duties of a pilot;

(11) relationship between master and pilot;

(12) practical operation and use of marine radar, including use of maneuvering board;

(13) currents and tides;

(14) dock headings, lengths, depths of water alongside pier locations and berth numbers;

(15) U.S. Government Public Health Quarantine regulations;

(16) prohibited areas, restricted areas, explosive anchorages;

(17) chart knowledge, including chart symbols and abbreviations;

(18) use of navigational and bridge instruments;

(19) engine order and rudder commands for

(A) U.S. merchant vessels;

(B) U.S. naval vessels;

(C) foreign flag merchant vessels.

(c) An applicant for licensure as an unlimited, limited or channel pilot will be orally interviewed by the board on his safety record and elaboration of his seagoing background as listed on his application. In addition, the applicant must pass the oral examination required by secs. 30, 40 and 50 of this chapter with a score of at least 75 percent in the following topics:

(1) knowledge of the local harbor conditions and local regulations in the area applied for;

(2) signals; and

(3) rules of the road. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50)

Authority: AS 08.62.040(a)(2)

**12 AAC 56.080. BIENNIAL LICENSE RENEWAL.** (a) All licenses expire on December 31 of even-numbered years. In order to renew the biennial license, all licensees must submit the renewal application with

(1) proof of having satisfactorily completed a physical examination within 30 days of the renewal date; and

(2) the biennial license fee of \$200.

(b) In addition, a licensee

(1) holding an unlimited pilot's license must submit proof of having worked in a licensed deck officer capacity for two months in the area for which he was licensed during the last biennial period;

(2) holding either a limited pilot's license or a channel pilot's license must have worked in a capacity which in the opinion of the board has kept him currently knowledgeable in the area for which his license was originally issued;

(3) who has not worked during the last two biennial periods in an area for which he was licensed shall petition the board to determine that he has sufficient knowledge and experience to resume pilotage in that area and is restricted from doing so until such a determination has been made. (Eff. 6/11/71, Reg. 38; am 6/19/74, Reg. 50; am 5/12/78, Reg. 66)

Authority: AS 08.62.040(a)(2) and (b)

### ARTICLE 3. INSIDE WATERS

#### Section

- 90. General rule for determining boundaries of inside waters of Alaska
- 100. Established boundaries of inside waters of Alaska
- 110. Exclusions for entering inside waters of Alaska
- 120. Pilot stations or pickup points

12 AAC 56.090. GENERAL RULE FOR DETERMINING BOUNDARIES OF INSIDE WATERS OF ALASKA. At all buoyed entrances from seaward to bays, sounds, rivers, or other estuaries for which specific lines are not described in this chapter, the waters inshore of a line drawn approximately parallel with the general trend of the shore, drawn through the outermost buoy or other aid to navigation of any system of aids, are inside waters. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(1) and (b)

12 AAC 56.100. ESTABLISHED BOUNDARIES OF INSIDE WATERS OF ALASKA. (a) The boundaries for Southeastern inside waters are as follows: A line drawn from Cape Spenser Light due south to a point of intersection which is due west of the southernmost extremity of Cape Cross; thence to Cape Edgecumbe Light; thence through Cape Bartolome Light and extended to a point of intersection which is due west of Cape Muzon Light; thence due east to Cape Muzon Light; thence to a point which is one mile, 180° true, from Cape Chacon Light; thence to Barren Island Light; thence to Lord Rock Light; thence to the southernmost extremity of Garnet Point, Kanagunut Island; thence to the southeasternmost extremity of Island Point, Sitklan Island. A line drawn from the northeasternmost extremity of Point Mansfield, Sitklan Island, 40° true, to where it intersects the mainland.

(b) The boundaries for Southwestern inside waters are as follows:

(1) Prince William Sound. All waters of Prince William Sound inside a line drawn from Cape Puget to Point Elrington; thence to Cape Clear; thence Zaikof Point to Cape Hinchinbrook Light; thence Point Bentinch Light to Point Whitshed;

(2) Resurrection Bay. The waters of Resurrection Bay north of latitude 59° 59.0' north;

(3) Cook Inlet. All waters of Cook Inlet inside a line drawn from Cape Douglas (latitude 58° 51.2' north, longitude 153° 14.9' west) through Cape Elizabeth Light at latitude 59° 08.9' north, longitude 151° 52.5' west to the Kenai Peninsula shoreline. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(1) and (b)

12 AAC 56.110. EXCLUSIONS FOR ENTERING INSIDE WATERS OF ALASKA. Vessels are excluded from the use of a licensed marine pilot for inside waters only when proceeding directly from points outside Alaska inside waters to an established pilot station or pickup point. These exclusions are as follows:

(1) Southeastern Alaska:

(A) travel via Clarence Strait to Guard Island at a point located at latitude 55° 26.7' north, longitude 131° 52.8' west;

(B) travel via Clarence Strait to a point located approximately one mile east of Point McCartney Light at latitude 55° 06.8' north, longitude 131° 42.3' west;

(C) travel via Cape Bartolome in Bucareli Bay to Cabras Island located at latitude 55° 20.3' north, longitude 133° 23.4' west;

(D) travel via Cape Ommaney in Chatham Strait to a point in the vicinity of Point Retreat located at latitude 58° 25.0' north, longitude 134° 59.0' west;

(E) travel via Sitka Sound to a vicinity close aboard Eckholms Light at latitude 57° 00.6' north, longitude 135° 21.4' west. This exclusion applies only to those vessels going to the port of Sitka; and

(2) Southwestern Alaska:

(A) travel via Prince William Sound to the Cordova Pilot Station located approximately two miles south of Sheeps Point at latitude 60° 37.0' north, longitude 146° 00.0' west;

(B) travel via Prince William Sound to the Valdez Pilot Station located approximately 2.3 miles north of Busby Island Light (60° 53.8' north, 146° 48.9' west);

(C) travel via Prince William Sound to the Whittier Pilot Station located approximately one mile south of Pigot Point Light (60° 48.1' north, 148° 21.3' west);

(D) travel via Cook Inlet to the Homer Pilot Station located approximately one mile south of Homer Spit Light on Coal Point (59° 36.2' north, 151° 24.5' west); and

(E) travel to the Kodiak City or Womens Bay Pilot Station located approximately one mile eastward of St. Paul Harbor lighted buoy No. 14 (57° 44.5' north, 152° 24.3' west). (Eff. 6/11/71, Peg. 38; am 6/1/72, Reg. 42)  
Authority: AS 08.62.040(a)(1) and (b)

PICKUP POINTS. (a) The established pilot stations for Southeastern Alaska are as follows:

(1) Guard Island (55° 26.7' north, 131° 52.8' west);

(2) Point McCartney – located approximately one mile east of Point McCartney (55° 06.8' north, 131° 42.3' west);

(3) Cabras Island, Bucareli Bay (55° 20.3' north, 133° 23.4' west);

(4) Sitka Sound – to a point close aboard Eckholms Light (57° 00.6' north, 135° 21.4' west);

(5) Point Retreat – to a point in the vicinity of Point Retreat (58° 25.0' north, 134° 59.0' west); and

(6) repealed. (6/30/78, Reg. 66)

(b) The established pilot stations for Southwestern Alaska are as follows:

(1) Cordova – located approximately two miles south of Sheeps Point (60° 37.0' north, 146° 00.0' west);

(2) Valdez – located approximately 2.3 miles north of Busby Island Light (60° 53.8' north, 146° 48.9' west);

(3) Whittier – located approximately one mile south of Pigot Point Light (60° 48.1' north, 148° 21.3' west);

(4) Seaward – located one mile southeasterly from Caines Head Light (59° 59.0' north, 149° 23.1' west);

(5) Cook Inlet – located near Homer approximately one mile south of Homer Spit Light on Coal Point (59° 36.2' north, 151° 24.5' west);

(6) Kodiak (city) or Womens Bay – located approximately two miles 100° true from St. Paul Harbor entrance light (57° 44.4' north, 152° 25.7' west);

(7) Cold Bay – located approximately three miles southward of Cold Bay entrance buoy No. 1 (55° 05.6' north, 162° 31.8' west);

12 AAC 56.120. PILOT STATIONS OR

(8) Dutch Harbor – located one mile east of Ulakta Head Light (53° 55.5' north, 166° 30.4' west); and

(9) Adak – located two miles east of Gannet Rocks Light (51° 52.1' north, 176° 36.4' west).

(c) For those areas not having an established pilot station or pickup point, pickups will be made only by specific arrangement with the ship's agent and pilots. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 5/12/78 and 6/30/78, Reg. 66)

Authority: AS 08.62.040(a)(1) and (b)

#### ARTICLE 4. RATES

##### Section

- 130. General rule for determining rates
- 140. Consent to rate deviation
- 150. Rate adjustment

12 AAC 56.130. GENERAL RULE FOR DETERMINING RATES. If no rate for an area has been established, the rate mutually agreed on by the parties will be used until a rate is established by the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(4) and (b)

12 AAC 56.140. CONSENT TO RATE DEVIATION. If parties to a piloting contract are dissatisfied with the rates established for an area, the parties may agree to a higher rate. This rate mutually agreed upon must be submitted to the board for approval. No deviations from the published rate may be used until approved by the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(1)(4)(a) and (b)

12 AAC 56.150. RATE ADJUSTMENT. Any party having a material interest in the rate structure desiring a rate change for an area must file a request for a rate adjustment at least 60 days before the next meeting of the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(4) and (b)

#### ARTICLE 5. GENERAL PROVISIONS

##### Section

- 160. Duties of pilots
- 170. Physical incapacitation
- 180. Registration of operators
- 190. Definitions

12 AAC 56.160. DUTIES OF PILOTS. (a) A pilot shall be on duty piloting the vessel at all times when the vessel is in transit in pilotage waters.

(b) Passenger vessels in transit of the inside waters of Southeast Alaska except as set forth in sec. 110 of this chapter are required to carry two pilots on board for continuous alternating duty.

(c) In any case where a vessel being piloted by a state licensed pilot goes aground, collides with another vessel or dock, or meets with any casualty, or is injured or damaged in any way, the pilot shall, within ten days thereafter, make written report thereof to the board, and the board may thereupon, either with or without complaint being made against the pilot, investigate the matter reported upon. In any case of apparent damage being sustained or caused by a vessel under his charge the pilot shall file his report as soon as possible after returning to shore.

(d) Pilots will report to the Aids to Navigation officer of the United States Coast Guard, all changes in lights, range lights, buoys, and any dangers to navigation that may come to their knowledge.

(e) Any pilot who fails, neglects or refuses to make a report to the board as required by the pilotage laws of the state, or by this chapter, for a period of ten days after the date when the report is required to be made, is subject to having his license suspended at the discretion of the board.

(f) Pilots when so notified in writing shall report in person to the board at any meeting specified in the notice.

(g) Any pilot summoned to testify before the board shall appear in accordance with the summons and shall answer, under oath, any questions put to him which deal with any matter connected with the pilot service, or of the pilotage waters over which he is licensed to act. He is entitled to have his attorney or advisor present during any such appearance and testimony.

(h) A pilot on boarding a ship, if required by the master, shall exhibit his state license or photostatic copy of it.

(i) Pilots on board passenger vessels shall be provided access to an operable radio on the bridge at all times to use on frequency 2182 kHz for security purposes.

(j) Repealed. (5/12/78, Reg. 66)

(k) All pilots shall report on a quarterly basis

the names of all vessels served that were subject to the services of a licensed pilot. (Eff. 6/11/71, Reg. 38; am 6/19/74, Reg. 50; am 5/12/78, Reg. 66)

Authority: AS 08.62.040(a)

12 AAC 56.170. **PHYSICAL INCAPACITATION.** Any pilot who is physically incapacitated as a pilot for a period of 90 days or more shall not return to service as an active pilot until he has passed a physical examination by a physician approved by the board. (Eff. 6/11/71, Reg. 38; am 8/2/73, Reg. 47)

Authority: AS 08.62.040(a)(1) and (2)  
AS 08.62.040(b)

12 AAC 56.180. **REGISTRATION OF OPERATORS.** All ship owners, operators and agents of owners and operators whose vessels are subject to AS 08.62 must register with the board and keep the board advised of any changes of names and addresses. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(3)

12 AAC 56.190. **DEFINITIONS.** For the purpose of this chapter "pilotage waters" means all inside waters of Alaska except those described in sec. 110 of this chapter. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(b)

TO: Charles Webber, Chairman,  
Board of Marine Pilots  
Commissioner, Commerce &  
Economic Development

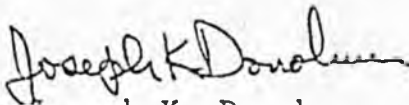
DATE: February 8, 1979

FILE NO:

TELEPHONE NO.

FROM: AVRUM M. GROSS  
ATTORNEY GENERAL

SUBJECT: Applicability of AS 44.62  
to the rate-making proceeding;  
Participation of Absent Board  
Members in the proceeding;  
Ex Parte Contacts.  
Our File: J-66-458-79

By:   
Joseph K. Donohue  
Assistant Attorney General

You have requested our advice generally concerning the proper conduct of the rate-making proceeding presently designated the Proposed Tariff Increase filed by Southwest Alaska Pilots Association, BMP Rate Case No. 78-1. This office has reviewed the course of the proceeding thus far and wishes to give the board members several general instructions concerning the proper conduct of a rate-making proceeding. Many of these rules of conduct are of general application and the Director of the Division of Occupational Licensing should instruct members of other boards along similar lines whenever he deems it appropriate.

1. Applicability of AS 44.62.330 - .620

The Southwest Alaska Pilots Association filed a request for rate adjustment prior to the December 5th meeting of the Board of Marine Pilots in accordance with 12 AAC 56.150. \*/ In doing so, they initiated a rate making proceeding under the Board's general authority to "regulate pilotage fees." AS 08.62.040(a)(4). The hearing was subsequently continued until January 30, 1979. The question arises as to whether the administrative adjudication provisions of the Administrative Procedure Act (APA), AS 44.62.330 - .630 apply to a rate-making proceeding. AS 44.62.330(a)(33) expressly states that the Board of Marine Pilots is subject to this article of the APA. A review of those provisions clearly demonstrate that they are designed to establish the proper procedure for license revocation proceedings. There can be no question but that the Board is subject to the APA in any case involving the denial, suspension or revocation of a marine pilot's license.

However, it is also clear that the accusation, notice of defense and other provisions of the APA are not readily adapted

\*/ That regulation provides that "[a]ny party having a material interest in the rate structure desiring a rate change for an area must file a request for rate adjustment at least 60 days prior to the next meeting of the board."

to a rate-making proceeding. Each of the regulatory commissions created under state law -- the Alaska Public Utilities Commission, AS 42.05, the Alaska Pipeline Commission, AS 42.06, and the Alaska Transportation Commission, AS 42.07, provide entirely separate procedures for the filing of tariffs and for protesting rate increases by interested parties. These procedures which are implemented by statutory provisions and regulations enacted by those commissions insure procedural due process in the context of a hearing which is both adversary and legislative in nature. \*/

A review of the tariff filing and protest procedures by other rate-making or regulatory commissions demonstrates the inapplicability of the administrative adjudication provisions of the Administrative Procedure Act to this particular function of the Board of Marine Pilots. It is therefore the opinion of this office that the present rate-making hearing before the board need not be held in strict compliance with those latter provisions. However, the board must conduct its rate-making hearing in a fair and equitable manner which utilizes the APA provisions as appropriate guidelines, wherever possible, and which benefits from rate-making procedures of those agencies assigned comparable regulatory responsibilities with regard to determination of rates.

In light of the foregoing, this department recommends that the Board of Marine Pilots take all appropriate steps to promulgate procedural regulations and regulations setting forth the substantive criteria which it will consider in formulation of pilotage fees as soon as possible. In the meantime, the board should take every action within its authority to insure the parties to the instant proceedings are afforded ample opportunity to fully present their case and argue their position.

## 2. Participation of Absent Members

The Board of Marine Pilots is presently composed of seven members -- the Commissioner of Commerce and Economic Development, two shipping agents (one from Southeastern Alaska and one from Southwestern Alaska), two marine pilots (also one from Southeastern Alaska and one from Southwestern Alaska) and two public members. Presently one of the public member positions is vacant. At the January 30, 1979, hearing only four members were in attendance i.e. the Commissioner, both pilot members and the shipping agent from Southwestern Alaska. At that hearing, the board issued an order requiring document production and setting a briefing schedule. At the next board meeting in April, the board intends to deliberate

\*/ It is legislative to the extent that the commissions are independently charged with setting just and reasonable rates.

and issue a decision with regard to the request for rate adjustment. The question arose whether the absent members would be able to participate in those deliberations should they attend the April meeting.

Traditionally, it has been the common judicial practice for a judge or commissioner to refuse to participate in a decision unless he has heard all of the testimony and been given an opportunity to review the entire record in the proceeding. This concept is expressly incorporated in AS 42.05.171 which states that a commissioner of the Alaska Public Utilities Commission "who has not heard the testimony, including the argument, may not participate in making a decision of the commission." See also AS 42.06.180 (APC). This should be compared with the present practice of the Alaska Supreme Court with regard to members of the panel who are absent during oral argument of an appeal. It is the practice of our state court to notify the parties that the absent justice has requested the parties' consent that he be allowed to participate in the proceeding upon his review of the tapes of the oral argument. The question is presented in such a way as to indicate that an objection by either party to the appeal would automatically be upheld and thus disqualify the absent member.

This office feels that this latter procedure adequately comports with the idea of a fair and impartial hearing on the record and that no party to the proceeding would be prejudiced by its adoption. Thus, any absent member of the board who wishes to participate in the rate-making decision should make his desire known formally by letter to the chairman with copies to all interested parties to the proceeding. The interested parties would thus have an opportunity to object to the participation of any of the absent members. Obviously, if there are no objections, the absent members can participate in subsequent deliberations assuming they have had an opportunity to review the tapes of the hearing held on January 30, 1979, and otherwise review the entire written record before the Board.

The conflict of interest question should be addressed in the same context. That is, is there a duty of a board member to disqualify himself in the face of an obvious conflict of interest? The pilot member from Southwest Alaska clearly stood to materially benefit from the rate-making decision before the board should that tariff increase be approved. It is equally true that the board member representing the shipping interests of Southwest Alaska had a direct interest in the case.

The Administrative Procedure Act expressly addresses this particular problem. AS 44.62.450(c) states in relevant

part:

A hearing officer or agency member shall voluntarily disqualify himself and withdraw from a case in which he cannot accord a fair and impartial hearing or consideration. A party may request the disqualification of a hearing officer or agency member by filing an affidavit, before the taking of evidence at a hearing, stating with particularity the grounds upon which it has claimed that a fair and impartial hearing cannot be accorded. . . . No agency member may withdraw voluntarily or be disqualified if his disqualification would prevent the existence of a quorum qualified to act in the particular case.

Again, we feel that the Administrative Procedure Act has incorporated a sound rule which comports with the due process notions guaranteed by the state and federal constitutions and that that guideline should be observed in this hearing and in future hearings. It could be also argued that the statutory composition of the board contemplates a conflict of interest and attempts to balance that conflict by requiring that there be a pilot member and shipping industry representative from each pilotage region of the state. However, this office has in the past and reiterates here that in the interest of a fair and impartial hearing that unless necessary for a quorum, members with conflicts should disqualify themselves. This was the advice given the board by the undersigned in response to a similar question at its meeting on April 21, 1976. See Minutes of Meeting Board of Marine Pilots, April 20 and 21, 1976.

Thus, in the context of the January 30, 1979, hearing at which the statutory quorum was in attendance, it was proper for the two members from Southwest Alaska to refuse to voluntarily disqualify themselves from the hearing. Likewise, they would not have been susceptible to a motion to disqualify, had such a motion been made, given the fact that their absence would have rendered the board unable to act.

### 3. Ex parte contacts

As a final cautionary matter, this office hereby advises each member of the Board of Marine Pilots that, in his capacity as a board member, he is serving in a quasi-judicial capacity in reviewing the tariff application of the Southwest Alaska Marine Pilots Association. Therefore, each member should refrain from communications with any interested party concerning the merits of the case. If any interested party

or his attorney \*/ approaches a member of the board, the board member should merely refrain from discussing any matter pertinent to the proceeding and request that the interested party refrain from discussing the case. Ex parte contacts between board members and parties interested in the outcome of the litigation arguably violate constitutional due process rendering that member subject to disqualification and possibly invalidating the entire proceeding. See Moss v. CAB, 430 F.2d 891 (D.C. Cir. 1970); Sangamon Valley v. United States, 269 F.2d 221 (D.C. Cir. 1959).

A corollary of the rule prohibiting ex parte contacts is the rule concerning the confidentiality of the board's deliberation process. The importance of flexible and open debate in such closed session is expressly recognized and promoted in AS 44.62.310. That section provides two general exceptions to the open meeting requirement for board meetings. First, certain topics which are carefully delimited in subsection (c) may be discussed in executive session e.g. matters which would prejudice the reputation of any person. Second, subsection (d) exempts meetings of judicial or quasi-judicial bodies holding a meeting to make a decision in any adjudicatory proceeding e.g. in rate-making proceeding. In both cases, the matters discussed should be confidential. Obviously, no one is prejudiced by this confidentiality since the board cannot act in the absence of a public decision with related findings and conclusions supported by the record.

This office requests strict compliance with these latter rules of conduct. This advice is of general application to any member of a professional licensing board participating in, or likely to review the result of, an adjudicative proceeding involving licensing, rates etc.

JKD:mll

cc: All Board Members

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\*/ Such ex parte contacts by an attorney would in most cases be deemed an unethical practice. See Code of Professional Responsibility, Canon 7; EC 7-35.

TO: Don Hostak, Director  
Division of Occupational  
Licensing  
Department of Commerce and  
Economic Development


DATE: February 5, 1979

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS  
ATTORNEY GENERAL

SUBJECT: Meeting and Necessary  
Quorum for the Board of  
Marine Pilots  
Our File: J-66-458-79

By:   
Joseph K. Donohue  
Assistant Attorney General

On January 30, 1979, I attended a Board of Marine Pilots meeting at which two technical procedural questions were raised. The first question relates to the proper manner in which to call a special meeting of the Board. AS 08.62.030 provides that the Board shall hold a regular annual meeting and in addition the Board may hold special meetings "at the call of the chairman with prior approval of the Governor". I inquired as to whether or not former Commissioner Hubbard had obtained the prior approval of the Governor when he called the meeting scheduled for January 30th. You indicated that you were uncertain as to whether that formality had been observed. In order to avoid any questions being raised in the future concerning this question, I would recommend that you prepare a form letter for the Governor's signature indicating his approval of each special meeting of the Board as well as a form letter for the Commissioner of Commerce and Economic Development's signature indicating that he has obtained the prior approval of the Governor and calling the special meeting for the specific dates involved. These letters could be entered into the record and minutes of each meeting to indicate that the Board had been properly convened.

You also inquired concerning the proper quorum requirements of the Board of Marine Pilots and what majority of that quorum was necessary for a resolution to pass and be duly approved by the Board. AS 08.62.010 creates a seven member board consisting of the Commissioner of Commerce and Economic Development, two marine pilot members, two shipping agent members and two public members. AS 08.01.030 provides that a majority of a membership of a board constitutes a quorum unless otherwise provided. There being no different quorum requirement established by AS 08.62 four members of the Board must be present at the meeting before the Board of Marine Pilots can conduct business. In turn, a majority of that quorum is necessary for the Board to take binding legal action. Thus the idea of the quorum is to establish a threshold number of the members of the board which when present at the meeting are competent to transact business in the name of the Board but in the absence of the other members. It is traditionally defined as a majority of the membership of the Board unless otherwise provided by statute. On the other hand, it takes only a

majority of that quorum to bind the Board as a whole. Benintendi v. Kenton Hotel, 60 N.E. 2d 829, 831 (New York 1945). This will at times be a minority of the entire membership of the Board.

In this context, I wish to bring to the attention of the Board its regulation 12 AAC 56.010 which states:

(a) For the purpose of approving applications for examination and administering the examination for a temporary license, two members of the board are a quorum.

(b) For the purposes of board meetings, hearings, examinations and for conducting all other board business, three members are a quorum.

Prior to 1976 subsection (b) was a correct statement of the law. In 1976 with the addition of two public members, the quorum requirement of the Board of Marine Pilots was increased to four members. (see sec. 8, ch. 258 SLA 1976) Thus this regulation has been superseded by a statutory amendment and is no longer valid.

With regard to subsection (a) it appears as though the proper authority for that subsection is found in AS 08.62.040(a)(2) which states that the Board can by regulation provide for the examination of pilots and the issuance of pilot licenses to qualified persons. Under that provision it would appear that the Board would have the discretion to provide for issuance of a temporary license on the basis of the approval of two members of the Board. Thus strictly speaking it does not appear to be a quorum requirement or it is a quorum requirement limited exclusively to the Board's examination and licensing authority. In any event, the Board should consider making these minor revisions outlined above in its next set of proposed regulations.

JKD:mll

TO: [

Joseph K. Donohue  
 Assistant Attorney General  
 AGO  
 Juneau, Alaska

DATE: April 17, 1979

FILE NO.

TELEPHONE NO.

FROM

H.R.M.S.  
 H. Russ McKeever  
 Paralegal  
 AGO  
 Juneau, Alaska

SUBJECT: Marine Pilots Regulations

Per your request, I have examined the material available in AS 08.62.010 - 08.62.190 as well as the regulations promulgated by the Board of Marine Pilots pursuant to the Alaska Administrative Procedure Act and contained in 12 AAC 56.010 - 56.190. I have also reviewed similar laws and regulations from the United States Coast Guard and the states of Washington, Oregon, and California. Following are my observations and suggestions which the Alaska Board of Marine Pilots may wish to consider.

The board, composed of representatives of marine pilots and shipping companies establishes pilotage tariffs which determine the salaries received by the pilots and the costs incurred by shipping companies. The board relies to a great degree on the information provided by the pilots whenever they anticipate altering the tariff rate. It is of extreme importance that the information be accurate, be provided on a regular basis and disclose all potential sources of income and conflicts-of-interest on the part of the pilots. The operations of the pilots individually, as well as the operation of their respective associations (Southwest Pilots Association and Southeast Pilots Association) should be open to maximum scrutiny by the Board. I would recommend that the Board consider adopting the following provisions relating to reporting income and pilotage activities and requiring disclosure of related interests and sources of income.

12 AAC 56.161. CONFLICT OF INTEREST. Without express written authority of the board, no pilot shall either

(1) own, or have any fiduciary interest in, any shipping or marine transportation business or concern;

(2) own an interest in, or have any fiduciary interest in, any boats used as pilot boats; or

(3) accept any form of compensation from the owner or operator of any pilot boat.

Authority: AS 08.62.040

12 AAC 56.162. REPORT OF FINANCIAL AND BUSINESS INTERESTS. A licensed pilot shall file a statement giving his income sources and business interests, under oath and on penalty of perjury, no later than April 15, or 15 days after the pilot files his federal income tax return in each year.

Authority: AS 08.62.040

12 AAC 56.163. CONTENTS OF STATEMENT. (a) Each statement shall be an accurate representation of the financial affairs of the pilot and shall contain the same information for each member of his family, as specified in (b) of this section. An asset or liability under \$500, household goods, and personal effects need not be identified.

(b) Each statement filed by a pilot under this chapter shall include:

(1) The source of all income over \$500 including capital gains, whether or not taxable, received by him or his spouse or dependent child of his or non-dependent child who is living with him, during the preceding calendar year;

(2) The identity by name and address, of each business in which he or his spouse or dependent child of his or non-dependent child of his who is living with him was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year,

(3) The identity and nature of each interest owned by him or his spouse or dependent child of his or non-dependent child of his who is living with him in any business during the preceding calendar year. <sup>1/</sup>

Authority: AS 08.62.040

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1/ Both 12 AAC 56.162 and 163 are taken in part from AS 39.50.020 and 030 which deals with public officers and employees.

Although the matter of conflict-of-interest and financial accountability have not been previously addressed by the Boards of Marine Pilots either in Alaska or the other Western states, it is not without some precedent in Alaska law. To cite just a few examples; AS 27.05.020 Officials of the Department of Natural Resources, AS 21.06.040 Executives/ Employees of Division of Insurance, AS 24.20.291 Legislative Finance and Audit Personnel, AS 39.50.020 Public Officials, etc.

12 AAC 56.164. PILOTS TO FILE QUARTERLY REPORTS.

(a) Every pilot shall file with the board not later than the tenth of January, April, July and October of each year a report for the preceding quarter. The report shall contain an account of all moneys received for pilotage by him or by any other person for him or on his account or for his benefit. The report shall contain:

- (1) the name of each vessel piloted;
- (2) the name of the vessel's master;
- (3) The name of each vessel for which pilotage has been charged or collected;
- (4) the amount charged to or collected from each;
- (5) any rebates made and allowed and for what amounts;
- (6) where the vessel is registered;
- (7) whether the vessel was inward or outward bound;
- (8) the depth of each vessel's draft and its highest gross tonnage; and
- (9) the name of the pilot boat used.

(b) In addition, each report shall contain a daily work log setting forth the following:

- (1) All transportation and subsistence charges;
- (2) Amount of time spent on pilot boats in travel to or from vessels;
- (3) Actual piloting time aboard these vessels.<sup>2/3/</sup>

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2/RCW 88.16.110 Pilots to File Quarterly Report

Contents. Every pilot licensed under this chapter shall file with the board not later than the tenth day of January, April, July and October of each year a report for the preceding quarter. Said report shall contain an account of all moneys received for pilotage by him or by any other persons for him or on his account or for his

12 AAC 56.166. AUDIT. The marine pilots associations shall have their records audited annually by a certified public accountant approved by the board and submit the audit report to the board.

Authority: AS 08.62.040

In the "definitions" sections under both AS 08.62.200 and under 12 AAC 56.190 there is no reference to the word "pilots". I would suggest amending §190 with the addition of . . .

"pilot" means a marine pilot licensed under the provisions of this chapter.

Section 12 AAC 56.010 dealing with a board quorum appears to be in some need of revision. It seems more appropriate that (a) of that section should be placed under Article 2, Licensing.

12 AAC 56.065 Application and Temporary Licenses. § 10(a).

Since I believe the quorum requirements specified in 12 AAC 56.010 appear to be out of keeping with requirements imposed by other Western states, I would suggest the complete rewriting of this section to read:

12 AAC 56.010. Quorum. (a) For the purpose of board meetings, hearings, and conducting all other board business, except under (b) of this section, four members are a quorum as long as one member is a pilot, one member is an agent of managers of vessels subject to this chapter, and one is a public member.

(b) For the purpose of fixing pilotage rates, six

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benefit. Said report shall state the name of each vessel piloted, the amount charged to and/or collected from each vessel, the port of registry of such vessel, its dead weight amount so received, collected, or charged is in full payment of pilotage and such other information as the board shall by regulation prescribe.

A similar report is required of California pilots.

3/ Adoption of 12 AAC 56.164 would necessitate repeal of 12 AAC 56.160(k).

members is a quorum.

For comparison purposes, the state of California has three board members and two are required to transact any business. The state of Washington specifies that five of the seven members must be present for all matters. Oregon has five members on the board with a simple majority required as long as one pilot and one ship owner representative are included. The state of Oregon specifies further that for consideration of pilotage rates, the entire board must be in attendance.

Also, for your information I have attached copies of excerpts of California, Oregon, and Washington laws or regulations dealing with the subject of board hearings and license suspension or revocation.

HRMc :nnk



STATE OF  
WASHINGTON

Doug Lee Ray  
Governor

## DEPARTMENT OF TRANSPORTATION

Washington State Ferries, Seattle Ferry Terminal  
Seattle, Washington 98104 Tel. 461-800

## BOARD OF PILOTAGE COMMISSIONERS

October 23, 1979

Ms. Elaine Garrett  
Department of Commerce & Economic  
Development  
Division of Occupational Licensing  
Pouch D  
Juneau, AK 99811

Dear Ms. Elaine Garrett:

This letter responds to your telephone inquiry as to how pilotage tariffs are set in Washington State.

The Board of Pilotage Commissioners is charged with the annual setting of pilotage fees (RCW 88.16.035(4)). A copy of the current pilotage act is attached. For many years it has been the practice that the pilots associations, and the Puget Sound Steamship Operators Association (their pilotage committee) will negotiate a level of fees to which both sides ultimately come to an agreement. With previous communication, as the negotiations progress, the Board will set a hearing date to hear testimony and ask questions of the two sides as to how the agreement was reached. Because of the agreement between the parties, the Board is usually inclined to adopt the rates as proposed. The rate hearings are therefore usually very short in duration and when completed the usual monthly meeting is commenced (the hearing is set on the day of the regular meeting).

Last year the Grays Harbor pilots received a 7% increase; the Puget Sound pilots received a rate increase of 8.3%, covering an 18 months period. Negotiations are commencing now for the next round.

As you can see the Board spends very little time in the actual tariff making process. We feel this is better handled by the parties directly involved, i.e., the ones providing the services and the ones paying the bills.

Copies of the two current tariffs are attached along with copies of minutes of the two hearings at which they were adopted.

We hope this information will be of assistance to you in your efforts to establish your next set of tariff changes. If any members of the Commission or your staff are interested, our Board meetings are held the second Thursday of each month. We would be delighted to have you attend so as to exchange matters of mutual interest and concern.

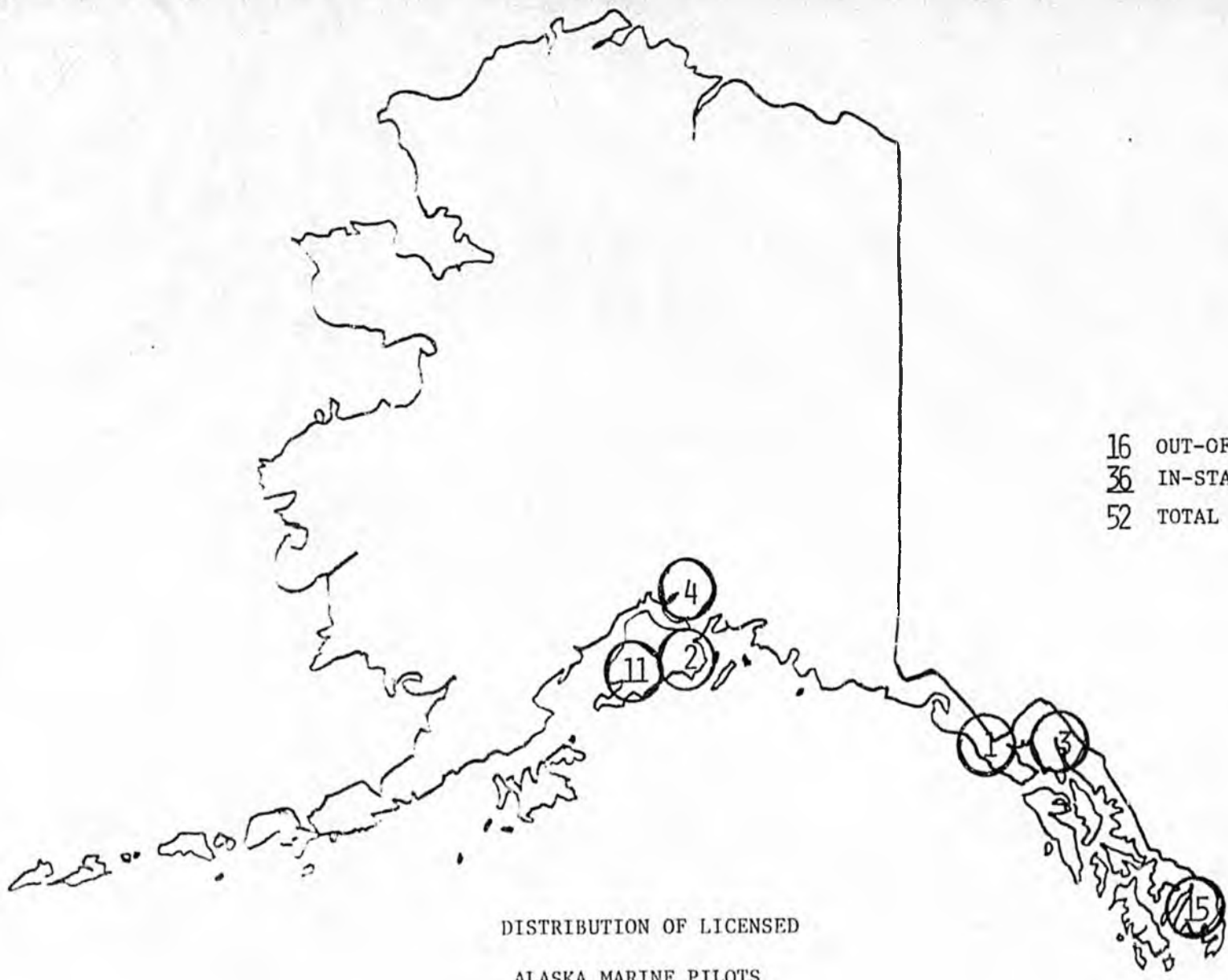
Please let us know if we can be of further assistance.

Sincerely,

BOARD OF PILOTAGE COMMISSIONERS

*Richard A. Berg*  
Richard A. Berg  
Chairman

RAB: ht  
enc.



DISTRIBUTION OF LICENSED  
ALASKA MARINE PILOTS