

Honorable Jerry Covey
Commissioner
Department of Education

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Adequate notice of
public meetings
AS 44.62.175(a)
AS 44.62.310

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You have requested advice from our office regarding what type of public notice will satisfy the notice requirement of the Open Meetings Act for the Museum Collections Advisory Committee meetings. Specifically, you asked whether public service announcements over the radio are sufficient, and whether a schedule of fixed monthly meeting dates, published twice a year, would be adequate notice.

The answers to both questions are yes, such notice is probably sufficient, with the cautionary note that the committee should be confident that the public service announcements will in fact be made. In any event, we advise that notice be provided a minimum of three days prior to previously unscheduled, unannounced meetings.

Factual Background

The Museum Collections Advisory Committee (MCAC) is a statutorily created committee that must approve all donations to and acquisitions of the Alaska State Museum. There are currently two regularly scheduled meetings of the MCAC during the fiscal year -- one face-to-face meeting and one teleconference, both publicly announced in newspapers throughout Alaska. The business of the committee, however, requires that it take action on potential acquisitions up to ten or even fifteen times per year.

Until recently, the MCAC solicited votes on museum acquisitions through telefax balloting. The committee is now aware that such balloting does not comport with the open meeting requirements of AS 44.62.310, and that they must call additional meetings to take such action. The MCAC is concerned about the costs of providing the notice, as well as the amount of advance notice required, since opportunities for acquisitions often arise on short notice.

Analysis

AS 44.62.310(a) sets out the requirement that government meetings be open to the public: "All meetings of a . . . committee . . . 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" The committee, then, is correct in its understanding that all committee action, including voting on acquisitions, must be taken in a meeting available to the public either in person or through teleconferencing.

Reasonable notice of public meetings is required by AS 44.62.310(e):

Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be used. In addition to the publication required by AS 44.62.175(a) in the Alaska Administrative Journal, the notice may be given by using a combination of print and broadcast media.

Reasonable notice means adequate notice under the circumstances.¹

If meetings occur at fixed monthly times and places, a schedule published in newspapers twice a year will probably adequately inform the public. The intent of the law is that the public have sufficient notice of the meetings to be able to be present (or available by teleconference) and know what the committee is doing. At no additional cost the schedule could be posted at museums and other public locations.

Where unscheduled meetings must be called on short notice, public service announcements over the radio might be sufficient. The statute appears to contemplate that either print or broadcast media or both may be used to satisfy the notice requirement. Unlike paid advertising, however, the committee may have no control over when or how often the announcements are made. To achieve the purpose of the statute that the public be informed of the meeting, the announcements probably must be made more than once. If the public service announcements are for some reason not broadcast, and the public is unaware of the meeting,

¹ 1981 Inf. Op. Att'y Gen. at 6 (May 11; 366-655-81).

action taken at the meeting is void. AS 44.63.310(f). ("Action taken contrary to this section is void.") This is because the statute does not merely require that the department make a reasonable effort to notify the public, but it states that "reasonable public notice shall be given" Therefore, if the department wishes to rely on public service announcements it should satisfy itself that the station's schedule for broadcasting them is reliable and adequate. If there is any doubt, a notice of the upcoming unscheduled meeting should be published in a newspaper. This can generally be done on short notice.

The notice requirement makes reference to AS 44.62.175(a)(2), which states that the Alaska Administrative Journal, published weekly, must include "notices of state agency meetings required under AS 44.62.310(e), even if the meeting has been held." The department must submit the schedule of upcoming meetings for publication, and must notify the journal of meetings that took place on short notice. Publication in the Alaska Administrative Journal alone, however, does not satisfy the notice requirement. At least one of the media discussed above must also be employed.

In your request for advice you noted that occasionally a vote must be taken on very short notice, such as one or two days. A 1981 attorney general opinion advises that "[a]bsent exigent circumstances, three-days notice appears to be the minimum allowable to be reasonable public notice and the three days cannot include Saturday, Sunday, or holidays."² This guideline is still appropriate, and 10 days should be provided if possible. Although the opportunity to purchase art work is not a predictable event, it is probably not an exigent circumstance permitting notice of less than three days. It is the regular business of the committee to vote on acquisitions, and in all but the rarest circumstances, the public must be afforded reasonable notice before those votes are taken. "[I]t is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly[.]" AS 44.62.312(a)(2).

Conclusion

In conclusion, it is our opinion that a schedule of fixed monthly meetings of the MCAC, published twice yearly, and stating date, time, and place of the meetings, is reasonable

² 1981 Inf. Op. Att'y Gen. at 6 (May 11; 366-0655-81).

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notice and satisfies the requirements of AS 44.62.310(e). If the need for unscheduled meetings arises, the public may be notified by public service announcements, as long as the department is confident that the public will in fact be made aware of the meeting by the announcements. If in doubt, newspaper advertisements should be taken out to insure adequate notice. Regardless of the media used, three days notice, excluding weekends and holidays, should be considered the minimum necessary to satisfy the statutory requirements.

JGL/bap