

MEMORANDUM

State of Alaska

Department of Law

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| TO: | Dr. Michael Johnson Commissioner Department of Education and Early Development | DATE: | November 25, 2020 |
| | | FILE NO.: | 2020200626 |
| | | TEL. NO.: | (907) 465-3600 |
| FROM: | Luann Weyhrauch Assistant Attorney General Public Corporations and Governmental Services Section | SUBJECT: | Statutory Authority for Land Transfer to Tribal Health Consortium |

Southeast Alaska Regional Health Consortium (SEARHC) seeks to buy three parcels on Japonski Island that are owned by the Department of Education and Early Development (DEED). As the first step in considering this proposal, the department must determine if such a sale is within its statutory authority. As indicated below, under current statute, the department does not have authority to transfer land to SEARHC.

DEED's authority to transfer real property is limited by state statute. Under AS 14.07.030(a)(6), DEED has authority to sell (or otherwise transfer) real property only to federal agencies, state agencies, or to political subdivisions. Under this statutory limitation, DEED does not have authority to sell real property to SEARHC (a tribal health consortium) since SEARHC is not a state or federal agency or a political subdivision. AS 14.07.030(a)(6) states, in relevant part, "The department may ... transfer real property to federal agencies, state agencies, or to political subdivisions."

A related statute, AS 14.07.030(a)(4), provides authority for the sale or disposal of abandoned or obsolete school facilities; it would not override the limitation on the transfer of real property under AS 14.07.030(a)(6). AS 14.07.030(a)(4) provides, "The department may ... provide for the sale or other disposition of abandoned or obsolete buildings and other state-owned school property." This provision is interpreted in 4 AAC 31.085 to allow for the disposal of a school facility that the department determines is no longer needed for the educational program in the community in which it is located.

Under 4 AAC 31.085(a), the regulation requires that the board of the REAA in which the state-owned school property is located must declare by resolution that the property, both land and buildings, is no longer needed for the purpose of providing educational services. Under subsections (b), (d), (f), and (g), the regulation allows DEED to convey the facility only if the facility is removed from the state-owned land. Under

paragraph (h), if disposal under other subsections is not feasible, demolition or other removal of the facility from state land is allowed. Under subsection (i), if removal of the facility under (g) is not feasible, a long-term lease may be approved. AS 14.07.030(a)(6), as interpreted by 4 AAC 31.085, would not provide authority for the land sale proposed by SEARHC.

I would be glad to discuss the impact of the described statutory limitation.

14.07.030 were corrected to reflect the relettering in that section.

Effect of amendments. — The second 2010 amendment, effective September 19, 2010, in (a)(11), added “projected energy consumption and costs,” following “schematic designs.”

The 2014 amendment, effective July 1, 2014, in (a)(16)(B), substituted “standards-based assessments in language arts and mathematics” for “standards-based assessments in mathematics, reading, and writing” following “student proficiency on”; in (b), rewrote the introductory language, which read, “In implementing its duties under (a)(2) of this section the department shall develop”, in (b)(1) and (b)(2), substituted “language arts” for “reading, writing” in three places.

The 2016 amendment, effective October 26, 2016, in (a)(2), added “the department may consult with the

University of Alaska to develop secondary education requirements to improve student achievement in college preparatory courses” at the end of the paragraph; in (a)(7), substituted “ensure” for “assure”; in (a)(12), added “the department may consult with businesses and labor unions to develop a program to prepare students for apprenticeships or internships that will lead to employment opportunities;” at the end of the paragraph; in (a)(16)(B), substituted “AS 14.03.123(f)(1)(A)” for “AS 14.03.123(f)(2)(A)”; and made a stylistic change.

Opinions of attorney general. — The State Board of Education has statutory authority to adopt regulations concerning corporal punishment of students in private schools to the extent necessary to protect the physical health and safety of the children. April 1, 1988 Op. Att’y Gen.

NOTES TO DECISIONS

Stated in *Tunley v. Municipality of Anchorage Sch. Dist.*, 631 P.2d 67 (Alaska 1980).

Collateral references. — Right of municipal corporation to recover back from contractor payments made under contract violating competitive bidding statute. 33 A.L.R.3d 397.

AIDS infection as affecting right to attend. 60 ALR4th 15.

Validity, construction, and effect of provision releasing school from liability for injuries to students caused

by interscholastic and other extra-curricular activities. 85 ALR4th 344.

Validity, under Federal Constitution, of regulations, rules, or statutes allowing drug testing of students. 87 ALR Fed. 148.

Constitutionality of teaching or otherwise promoting secular humanism in public schools. 103 ALR Fed. 538.

Sec. 14.07.030. Powers of the department. (a) The department may

(1) establish, maintain, govern, operate, discontinue, and combine area, regional, and special schools;

(2) enter into contractual agreements with the Bureau of Indian Affairs or with a school district to share boarding costs of secondary school students;

(3) provide for citizenship night schools when and where expedient;

(4) provide for the sale or other disposition of abandoned or obsolete buildings and other state-owned school property;

(5) prescribe a classification for items of expense of school districts;

(6) acquire and transfer personal property, acquire real property, and transfer real property to federal agencies, state agencies, or to political subdivisions;

(7) enter into contractual agreements with school districts to provide more efficient or economical education services; reasonable fees may be charged by the department to cover the costs of providing services under an agreement, including costs for professional services, reproduction or printing, and mailing and distribution of educational materials;

(8) provide for the issuance of elementary and secondary diplomas to persons not in school who have completed the equivalent of an 8th or 12th grade education, respectively, in accordance with standards established by the department;

(9) apply for, accept, and spend endowments, grants, and other private money available to the state for educational purposes in accordance with AS 37.07 (Executive Budget Act);

(10) set student tuition and fees for educational and extracurricular programs and services provided and schools operated by the department under the provisions of (1) of this section and AS 14.07.020(a)(9), (11), and (12);

(11) charge fees to cover the costs of care and handling with respect to the acquisition, warehousing, distribution, or transfer of donated foods;

(12) establish and collect fees for the rental of school facilities and for other programs and services provided by the schools;

(13) develop a model curriculum and provide technical assistance for early childhood education programs;

(14) notwithstanding any other provision of this title, intervene in a school district to improve instructional practices under standards established by the department in regulation, including directing the

(A) employees identified by the department to exercise supervisory authority for instructional practices in the district or in a specified school;

(B) use of appropriations under this title for distribution to a district;

(15) notwithstanding any other provision of this title, redirect public school funding under AS 14.17 appropriated for distribution to a school district, after providing notice to the district and an opportunity for the district to respond, when

(A) necessary to contract for services to improve instructional practices in the district; or

(B) the district has failed to take an action required by the department to improve instructional practices in the district; if funding is redirected under this subparagraph, the department shall provide the redirected funding to the district when the department has determined that the required action is satisfactorily completed.

(b) The department may not require a school district to review textbooks, instructional materials, or curricula more frequently than once every 10 years. (§ 1 ch 98 SLA 1966; am § 1 ch 66 SLA 1968; am §§ 2, 3, 34 ch 46 SLA 1970; am § 1 ch 161 SLA 1975; am § 15 ch 138 SLA 1986; am § 61 ch 50 SLA 1989; am § 15 ch 36 SLA 1990; am § 4 ch 173 SLA 1990; am § 2 ch 70 SLA 2008; ~~am § 1 ch 73 SLA 2018~~)

Revisor's notes. — In 1992, former paragraphs (10)-(14) were renumbered as (9)-(13) to reflect the 1989 repeal of former paragraph (9).

Cross references. — For pilot project terminating June 30, 2017 authorizing the department to make grants to nonprofit organizations to expand middle school science, technology, mathematics, and engineering education, see sec. 50, ch. 15, SLA 2014.

Effect of amendments. — The 2018 amendment, effective October 28, 2018, added (b).

Opinions of attorney general. — It is beyond the department's scope of authority to contract with private schools to provide educational services. March 18, 1993 Op. Att'y Gen.

NOTES TO DECISIONS

Cited in *Alaska State-Operated Sch. Sys. v. Mueller*, 536 P.2d 99 (Alaska 1975).

Sec. 14.07.032. Definition for AS 14.07.020 — 14.07.032. In AS 14.07.020 — 14.07.032, "instructional practices" means the strategies and methods used in teaching or delivering information, skills, material, and student learning management tools to a student to help the student achieve intended educational outcomes. (§ 3 ch 70 SLA 2008)

Effective dates. — Section 4, ch. 70, SLA 2008, makes this section effective June 5, 2008.

Sec. 14.07.035. Accounting and disposition of receipts. [Repealed, § 28 ch 90 SLA 1991.]

Sec. 14.07.040. Supplies and equipment for state-operated schools. [Repealed, § 34 ch 46 SLA 1970.]

Sec. 14.07.050. Selection of textbooks. Textbooks for use in the public schools of the

state, including a district offered statewide correspondence study program, shall be selected by district boards for district schools. Nothing in this section precludes a correspondence study student, or the parent or guardian of a correspondence study student, from privately obtaining or using textbooks or curriculum material not provided by the school district. (§ 1 ch 98 SLA 1966; am § 1 ch 96 SLA 1970; am § 2 ch 205 SLA 1970; am § 25 ch 59 SLA 1982; am § 1 ch 130 SLA 2002)

Opinions of attorney general. — A book may not be approved for use in publicly provided education if it advocates a partisan, sectarian, or denominational doctrine. To allow otherwise would permit a school

board to advocate partisan, sectarian, and denominational doctrines in a public classroom through textbooks. September 20, 2005 Op. Att'y Gen.

Sec. 14.07.052. State Textbook Commission. [Repealed, § 2 ch 96 SLA 1970.]

Secs. 14.07.053 — 14.07.054. [Renumbered as AS 14.07.058 — 14.07.059.]

Sec. 14.07.055. Expenses and per diem. [Repealed, § 19 ch 53 SLA 1973.]

Sec. 14.07.057. Transmittal of textbook selections. A school board that selects its own books shall forward a list of the selections to the department. (§ 1 ch 98 SLA 1966)

Secs. 14.07.058, 14.07.059. Alaska School Activities Association; activities fund. [Repealed, § 13, ch 43 SLA 1994.]

Sec. 14.07.060. Regulations. The board shall adopt regulations that are necessary to carry out the provisions of this title. All regulations shall be adopted under AS 44.62 (Administrative Procedure Act). (§ 1 ch 98 SLA 1966; am § 8 ch 96 SLA 1967)

NOTES TO DECISIONS

Quoted in State v. Northern Bus Co., 693 P.2d 319 (Alaska 1984).

Stated in Tunley v. Municipality of Anchorage Sch. Dist., 631 P.2d 67 (Alaska 1980).

Cited in State v. Bering Strait Regional Educ. Attendance Area Sch. Dist., 658 P.2d 784 (Alaska 1983).

Sec. 14.07.070. Withholding state funds. State funds may not be paid to a school district or teacher that fails to comply with the school laws of the state or with the regulations adopted by the department. (§ 1 ch 98 SLA 1966)

Article 2. State Board of Education and Early Development

Section

- 75. Creation
- 85. Appointment of members
- 95. Term of office
- 105. Quorum and chair
- 115. Removal
- 125. Meetings
- 135. Legal assistance
- 145. Commissioner of education and early development
- 150. Budget and fiscal authority
- 155. Partisan candidacy prohibited

Section

- 160. Bylaws
- 165. Duties
- 168. Report to the legislature
- 170. Additional powers and duties of board
- 175. Development of statewide assessment plan; review of education laws and regulations
- 180. Curricula approval and review; pilot program; incentives
- 182. Curriculum improvement and best practices fund

Administrative Code. — For state board of education, see 4 AAC 03.

(§ 1 ch 96 SLA 1967)

Sec. 14.07.120. Term of office and vacancy. [Repealed, § 14 ch 96 SLA 1967.]

Sec. 14.07.125. Meetings. The board shall meet at least quarterly. Meetings may be called by the chair or by a majority of the members of the board. Meetings shall be held in Juneau unless a majority of the members of the board changes the place of a meeting. (§ 1 ch 96 SLA 1967)

Sec. 14.07.130. Removal of commissioner. [Repealed, § 14 ch 96 SLA 1967.]

Sec. 14.07.135. Legal assistance. The Department of Law shall provide all legal services for the board. (§ 1 ch 96 SLA 1967)

Sec. 14.07.140. Commissioner administers department. [Repealed, § 14 ch 96 SLA 1967.]

Sec. 14.07.145. Commissioner of education and early development. (a) The board shall appoint the commissioner of education and early development subject to the approval of the governor. The commissioner shall be the principal executive officer of the department.

(b) The commissioner shall be appointed without regard to political affiliation and shall have at least a master's degree with five years' experience in the field of education since receiving it, with at least three of the five years in an exclusively administrative position.

(c) The commissioner serves at the pleasure of the board and may not be appointed by the board for a fixed term.

(d) The commissioner shall receive the salary set out in AS 39.20.080.

(e) The commissioner shall employ and remove all classified personnel in the department subject to AS 39.25 (State Personnel Act). The commissioner may employ and remove personnel in the exempt or partially exempt service subject to the approval of the board. Personnel in the exempt or partially exempt service have a right of appeal to the board if they are removed.

(f) *[Repealed, § 5 ch 14 SLA 1996.]* (§ 1 ch 96 SLA 1967; am §§ 1, 5 ch 14 SLA 1996)

Revisor's notes. — In 1987, subsections (d)-(f) were relettered as (f), (d) and (e), respectively, to conform to the organization of the Alaska Statutes.

In 1999, "commissioner of education" was changed

to "commissioner of education and early development" in this section in accordance with § 89, ch. 58, SLA 1999.

Sec. 14.07.150. Budget and fiscal authority. The commissioner has responsibility and authority for the preparation and execution of a budget and for the other fiscal affairs of the department, subject to the approval of the board. (§ 1 ch 98 SLA 1966; am § 2 ch 96 SLA 1967)

Sec. 14.07.155. Partisan candidacy prohibited. A member of the board may not be a candidate for partisan political office while serving as a member of the board. (§ 3 ch 96 SLA 1967)

Sec. 14.07.160. Bylaws. (a) The board may adopt bylaws for the management of the department.

(b) The bylaws shall be written and distributed in a manner so as to be readily available to personnel of the department.